

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





550

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20049

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YUMA MESA IRRIGATION AND  
DRAINAGE DISTRICT

Appellant

vs.

STEWART L. UDALL, SECRETARY OF THE INTERIOR,

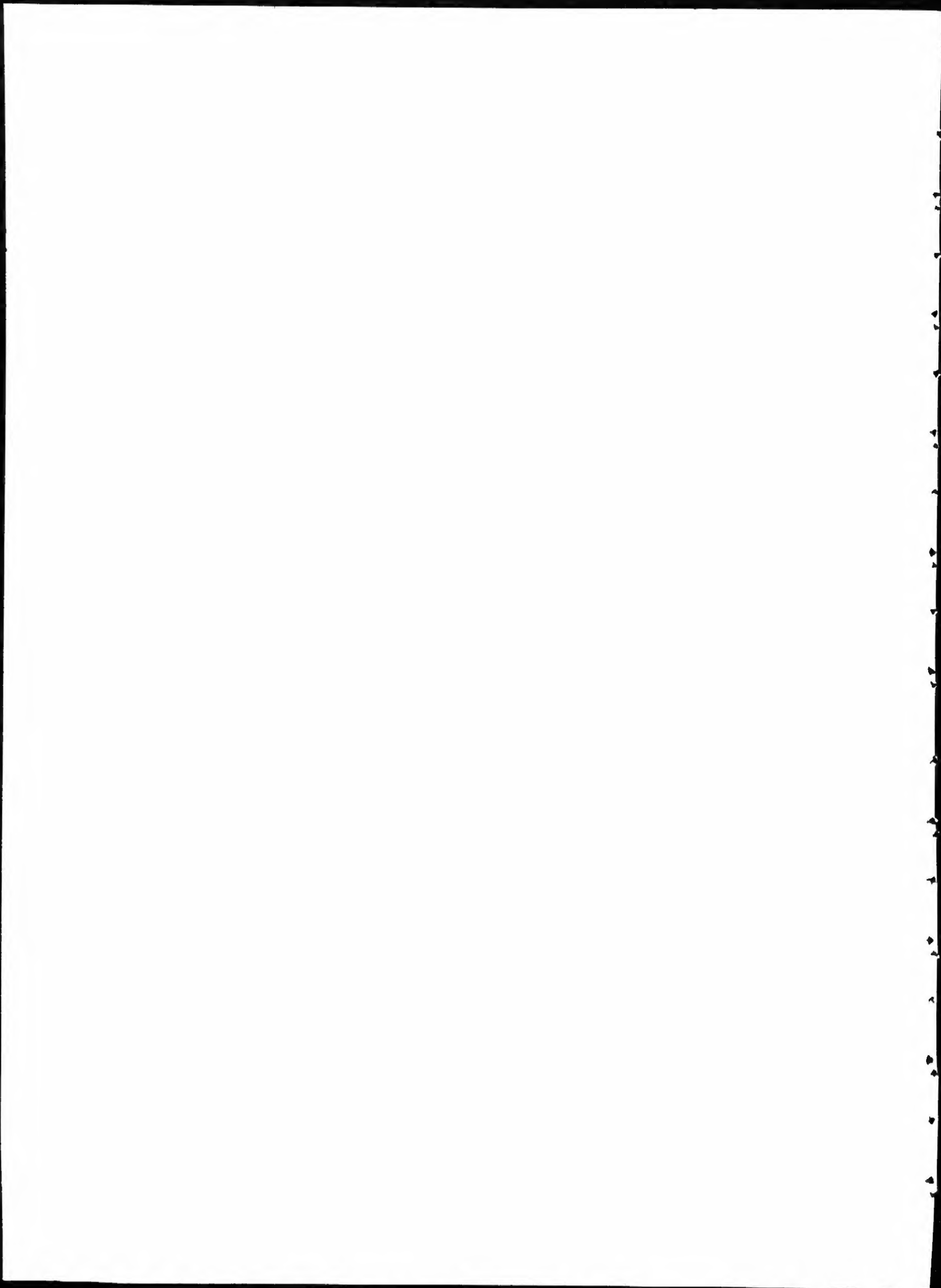
Appellee.

United States Court of Appeals  
for the District of Columbia Circuit

FILED NOV 9 1966

*Nathan J. Paulson*  
CLERK

Appeals From The United States District Court  
For The District of Columbia



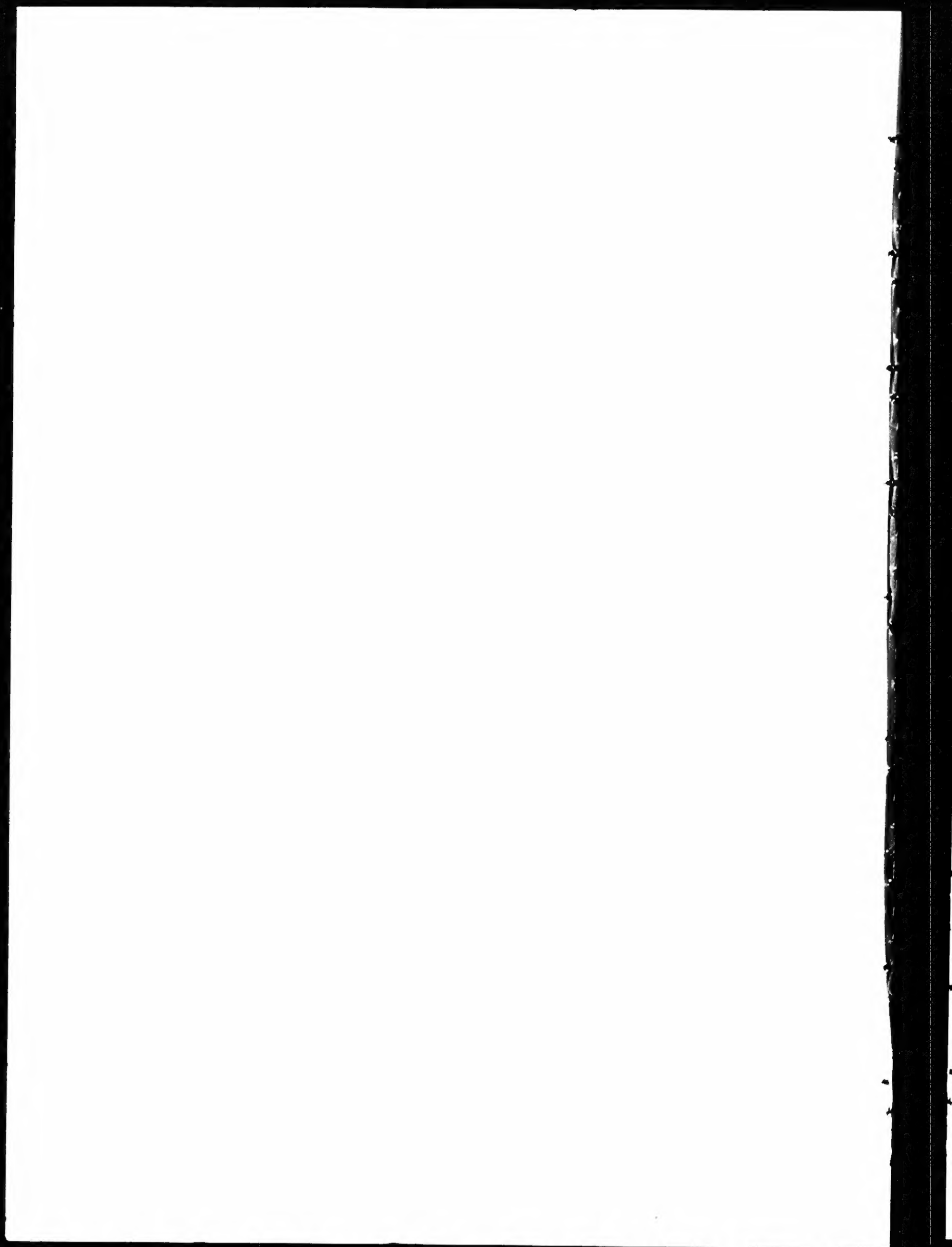
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A

RELEVANT DOCKET ENTRIES IN DISTRICT COURT

June 30, 1964	- Complaint with attached Exhibits A, B, C-1, C-2, D through I, CA 1551-64
July 8, 1964	- Motion of plaintiff for preliminary injunction; points and authorities, Exhibits 1 through 13
July 27, 1964	- Opposition of defendant to motion for preliminary injunction; Exhibits I, I-3, 5-8; II, 1, 3-5; III, 1; IV, A, B; V
August 10, 1964	- Reply of plaintiff to opposition of defendant; Exhibit 14
August 10, 1964	- Motion of plaintiff for summary judgment; points and authorities
August 13, 1964	- Opening statement by plaintiff
August 17, 1964	- Opposition of defendant to motion of plaintiff for summary judgment
August 18, 1964	- Withdrawal by plaintiff of motion for summary judgment
August 19, 1964	- Findings of facts, conclusions of law and order for preliminary injunction; \$500.00 bond
August 21, 1964	- Injunction undertaking by plaintiff in amount of \$500.00 with Glen Falls Insurance Co. approved
August 25, 1964	- Stipulation extending time for defendant to answer complaint to and including September 24, 1964
September 23, 1964	- Stipulation extending time for defendant to answer or otherwise plead to October 9, 1964
October 9, 1964	- Answer of defendant to complaint; Exhibit 1
October 9, 1964	- Calendared
March 4, 1965	- Called
August 4, 1965	- First notice under Rule B
September 1, 1965	- Certificate of readiness by plaintiff
September 10, 1965	- Objection of defendant to certificate of readiness
September 10, 1965	- Motion of defendant to dismiss; points and authorities; Exhibit
September 20, 1965	- Stipulation of counsel extending plaintiff's time to answer defendant's motion to dismiss and objection to ready certificate to and including October 12, 1965

B

- October 12, 1965 - Points and authorities of plaintiff in answer to defendant's opposition to certificate of readiness
- October 27, 1965 - Reply of defendant to opposition to motion to dismiss
- November 22, 1965 - Objections of plaintiff to findings of fact and conclusions of law and judgment proposed by defendant
- December 17, 1965 - Findings of fact and conclusions of law, Corcoran, J.
- December 17, 1965 - Order granting motion of defendant to dismiss, dissolving preliminary injunction heretofore entered, Corcoran, J.
- February 8, 1966 - Notice of appeal by plaintiffs from order of December 17, 1965, copy to Martin Green, deposit by Wheatley
- February 23, 1966 - Cost bond on appeal of plaintiff in amount of \$250.00 with National Surety Corporation, approved (fiat)
- March 8, 1966 - Transcript of proceeding November 5, 1965; (Eva Marie Sanche), filed
- October 20, 1966 - Supplemental record including transcripts of hearings filed



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

YUMA MESA IRRIGATION AND  
DRAINAGE DISTRICT  
Route 3, Box 32  
Yuma, Arizona

Plaintiff

v.

STEWART L. UDALL,  
SECRETARY OF THE INTERIOR  
Washington, D.C.

Defendant

Civil Action No. 1551-64

Filed June 30, 1964

COMPLAINT FOR REVIEW, FOR DECLARATORY  
JUDGMENT, AND FOR INJUNCTIVE RELIEF

The plaintiff for its complaint represents as follows:

1. The plaintiff is a political subdivision organized and existing under the laws of Arizona. The lands within the District are further part of the Yuma Mesa Unit of the Gila Project, whose entire supply of water necessary for maintenance of irrigation is received from the Colorado River under long established rights.

2. The defendant is the Secretary of the Interior of the United States and as such is charged with the administration of the laws, interstate compact, and treaty, relating to the storage and delivery of waters of the mainstream of the Colorado River, including the Reclamation Act of June 17, 1902, as amended, 43 U.S.C. §391 et seq.; the Boulder Canyon Project Act of 1928, as amended, 43 U.S.C. §620 et seq.; the Colorado

River Compact, H. Doc. No. 717, 80th Cong. 2d Sess. (1948) A17; and the Mexican Water Treaty of 1944, Treaty Series 994, 59 Stat. 1219. The official residence of the defendant is the District of Columbia.

3. The matter in controversy, exclusive of interest and costs, exceeds \$10,000.

4. The jurisdiction of the Court is invoked under Title II, Section 521 of the D.C. Code (Supp. III, 1964); upon the ground of diversity of citizenship; and upon the further ground that the construction and interpretation of federal statutes and treaties are involved and required. Plaintiff seeks relief under the terms of section 10 of the Administrative Procedure Act of June 11, 1946, 60 Stat. 243, 5 U.S.C. §1009; under the terms of 28 U.S.C. §§2201 and 2202 relating to Declaratory Judgments; and under the inherent power of the Court to grant injunctive relief in the premises.

5. This case is concerned with the unlawful, arbitrary action of the defendant in ordering a ten percent reduction in the delivery of water to plaintiff for irrigation of lands in the Yuma Mesa Unit of the Gila Project without a hearing, in deprivation of vested rights to the use of mainstream Colorado River water, contrary to the "law of the river" consisting of the Boulder Canyon Project Act, the Colorado River Storage Project Act, the Colorado River Compact and the Mexican Water Treaty (cited supra, paragraph 2).

6. The lands within plaintiff's District were originally included within the Yuma Reclamation Project as approved by the President January

5, 1911, and were embraced for the most part within the area described in the notice of appropriation posted by J. B. Lippincott on July 8, 1905, on the left bank of the Colorado River for that project. All of these lands are included within the boundaries of the first division of the Gila Project as authorized by the President on June 21, 1937, under the Reclamation law, and of the Yuma Mesa Division of the Gila Project as reauthorized by the Act of July 30, 1947 (61 Stat. 628) which specified that the Unit was to include 25,000 acres of irrigated land. Water for the Yuma Mesa division is diverted from the Arizona end of the Imperial Dam, through the Gila Gravity Main Canal, where it is pumped at the Yuma Mesa Pumping Plant to a canal with a capacity of 520 cubic feet per second which supplies distribution laterals serving lands in the District. (See Exhibit A incorporated herewith.)

When water from the Colorado River first became available to the Yuma Mesa Unit in 1943, the United States owned about fifty percent of the land within the Unit. It undertook the development of this land by constructing the necessary ditches, leveling the land and then actually planted and fertilized crops. By 1945 approximately five thousand acres had been developed by the United States, which then was opened to homesteading by veterans. The total irrigated acreage of all lands within the Unit has gradually increased to approximately 17,000 acres at present.

7. On May 26, 1956, the plaintiff entered a repayment contract with the United States, whereby the latter agreed, among other things, to

deliver from storage in Lake Mead to or for the plaintiff through the Gila Main Canal from Imperial Dam "such quantities of water . . . as may be ordered by the District and as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres situate" in the District. The contract inter alia, is subject to the provisions of the Boulder Canyon Project Act, the Colorado River Compact, and the Mexican Water Treaty. The contract is for permanent service. (Copy of pages 1-6 thereof incorporated herewith as Exhibit B.) Pursuant to this contract, the Secretary of Interior has delivered since 1956 to plaintiff District the following quantities of water for irrigation:

<u>YEAR</u>	<u>DIVERSION FROM STREAM</u> (Acre Feet)
1956	196,399
1957	187,329
1958	207,781
1959	230,232
1960	253,242
1961	248,278
1962	280,467
1963	273,836

8. On May 16, 1964, at a press conference in Las Vegas, the defendant announced that he was ordering a ten percent reduction in water deliveries effective June 1, 1964 to all water user agencies in the Lower Basin of the Colorado River, including plaintiff, to be implemented by the Bureau of Reclamation. On May 19, 1964, the Regional Director in a letter to plaintiff advised that the water scheduled for diversion to the plaintiff

for the seven month period of June through December, 1964, (176,000 acre-feet) would be reduced by 17,600 acre-feet to 158,400 acre-feet and that in addition the plaintiff would be charged with all water ordered for a given week and available for diversion at Imperial Dam but which could not be taken. That further in response to an amended schedule submitted under protest by the plaintiff, the Department of the Interior acting by and through T. H. Moser, project manager of the Yuma Project Office by letter of June 19, 1964, further informed plaintiff that all drainage wells must be credited against the proposed water order and directed that the reduced water order for the remaining seven months of the year would be 163,280 acre-feet from the yearly estimate submitted by plaintiff (Exhibit C-1 and C-2 incorporated herein).

That the defendant's order is arbitrary and capricious and without factual support; that diversionary works and delivery canals operated by the plaintiff constitute a completely lined and closed system without spillways; that therefore, all waters going into plaintiff's canal system end up and are used at the farm level; that the Yuma Mesa Irrigation and Drainage District is situated in arid, sandy desert country subject to extremes in summer temperatures; that at the present time, the District is substantially all planted to young citrus trees; that the demand for water for any one week, month or year is not a constant but tied irrevocably to cropping patterns and the weather; that a reduction in water deliveries will require a corresponding reduction in water at the farm and nursery level; that a

reduction of 10% based upon 1963 water orders is unrealistic and by reason of the weather and existing 1964 cropping patterns jeopardizes the existence and future of the citrus industry and other crops on the Mesa;

That the further proviso of the defendant's order charging the plaintiff with water ordered but which it does not take is arbitrary and without authority in the law; that all waters ordered for the plaintiff are released from Parker Dam some 150 miles from the point of diversion at the Imperial Dam on the Colorado River; that weather, river control and time intervals are beyond the control of plaintiff and the defendant's order charging plaintiff for all water orders under these circumstances further reduces the waters available for plant consumption.

9. The plaintiff has exhausted its administrative remedies.

10. The defendant's order of May 16, 1964, cutting plaintiff's diversions, was done without notice or hearing to plaintiff. Defendant has conceded that he did not undertake even an ex parte investigation of the water using practices of any of the Lower Basin water users prior to issuance of the order. For either of these reasons, the order constituted illegal, arbitrary action depriving plaintiff of its vested property rights to the use of Colorado River water in violation of the Administrative Procedure Act and the Fifth Amendment to the Constitution.

11. The defendant's order was for the illegal purpose of curtailing consumptive uses of water to permit the generation of power. At the date of his order of May 16, 1964 curtailing diversions for consumptive uses

from the main stream below Hoover Dam, the defendant had on hand over 18,000,000 acre-feet of water stored behind Hoover Dam (Lake Mead), Glen Canyon Dam (Lake Powell), and Flaming Gorge Dam (see Exhibit A). This quantity of water, even under the most adverse stream flow conditions, would satisfy all of the present consumptive use diversions in the Lower Basin without the curtailment ordered by the defendant for a period of at least four years. The reason for the curtailment was not because of a shortage of available water for consumptive uses, but to permit the defendant to store water at the upstream Glen Canyon Dam for the generation of power. The following sequence of events (inter alia) makes this clear:

(a) On March 26, 1964 the defendant opened the outlet gates at Glen Canyon in order to maintain Lake Mead at elevation 1,123 feet as provided in the filling criteria promulgated in 1962 (Exhibit D incorporated herewith);

(b) On May 5, 1964 the Regional Director of the Bureau of Reclamation wrote plaintiff requesting a voluntary ten percent reduction in diversion of water from the Colorado River because:

"...the outlook for Colorado River runoff is very poor for the April-July period of this year. Coupled with the filling problems at Lake Powell, an unusually difficult situation is posed." (Exhibit E incorporated herewith);

(c) On May 11, 1964 the defendant ordered the gates at Glen Canyon Dam closed for the purpose of attempting to bring Lake Powell to minimum power operating level while at the same time announcing that a



reduction of 10% based upon 1963 water orders is unrealistic and by reason of the weather and existing 1964 cropping patterns jeopardizes the existence and future of the citrus industry and other crops on the Mesa;

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(c) On May 11, 1964 the defendant ordered the gates at Glen Canyon Dam closed for the purpose of attempting to bring Lake Powell to minimum power operating level while at the same time announcing that a

"New era of water management" was required from the Lower Basin users (Exhibit F incorporated herewith);

(d) On the morning of May 16, 1964, the defendant announced that replacement power for that lost at Hoover Dam during the Lake Powell filling would be provided by certain utilities in the Lower Basin, the cost to be charged to the Upper Colorado River Basin Fund (Exhibit G incorporated herewith), while later that same day he announced the mandatory across-the-board ten percent reduction on all consumptive use diversions in the Lower Basin (see paragraphs 8 and 10, supra);

(e) On June 3, 1964, the defendant announced a speedup of generator installation at Glen Canyon Dam in anticipation that power can be produced there by mid-September:

"Secretary Udall said he is hopeful the filling rate of Lake Powell will continue so that the powerplant of this Colorado River Storage Project of the Bureau of Reclamation can begin returning revenues to the Upper Colorado River Basin Fund as soon as possible. . . ." (Exhibit H incorporated herewith. )

The defendant in ordering the curtailment of plaintiff's vested consumptive use rights for the purpose of permitting the storage of water at Lake Powell for power purposes, acted contrary to the clear mandate of sections 6, 8, 13(b) and 13(c) of the Boulder Canyon Project Act (43 U.S.C. §§617e, 617g(a), 617 1(b), 617 1(c); Article IV(b) of the Colorado River Compact approved by Congress in the Project Act; and section 7 of the Colorado River Storage Project Act (43 U.S.C. §620f), which provide that the impounding and use

of water for the generation of electrical energy shall not interfere with or prevent the use of water for agricultural and domestic purposes.

12. The defendant's order making an equal pro rata reduction of ten percent in the diversion of all users of mainstream Colorado River water in the Lower Basin is contrary to the mandate of sections 5 and 4(a) of the Boulder Canyon Project Act as construed by the decision and decree in Arizona v. California, 373 (U.S. 546 (1963); 376 U.S. 340 (1964)), which provides that if insufficient mainstream water is available for release to satisfy annual consumptive use of 7,500,000 acre-feet in the States of Arizona, California and Nevada, in no event shall more than 4,400,000 acre-feet be apportioned for use in California. Since the total scheduled annual consumptive use of mainstream waters by Lower Basin users in the three States for 1964 is considerably less than 7,500,000 acre-feet, while that scheduled for California users is more than 500,000 acre-feet in excess of 4,400,000 acre-feet, the defendant's order instituting an across-the-board ten percent cut is illegal and should be declared void as beyond his statutory authority.

13. The action of the defendant in ordering a ten percent reduction in diversions for consumptive use of users within the United States, without imposing any corresponding curtailment on the deliveries of mainstream Colorado River water to the Republic of Mexico violates the Mexican Water Treaty of February 3, 1944 (Executive A, 78th Cong. 2d Sess.) which provides:

"In the event of extraordinary drought . . . in the United States, thereby making it difficult for the United States to deliver the guaranteed quantity of 1,500,000 acre-feet a year, the water allotted to Mexico under subparagraph (a) of this Article will be reduced in the same proportion as consumptive uses in the United States are reduced. "

Article 15E of the Treaty provides:

"In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-feet allotted to Mexico, the United States Section shall so inform the Mexican Section in order that the latter may schedule such surplus water to complete a quantity up to a maximum of 1,700,000 acre-feet. . . . "

In 1963, the defendant delivered 2,003,898 acre-feet to Mexico and in the first four months of 1964 has delivered 73,857 acre-feet more to Mexico than was requested by Mexico. The defendant's efforts to impose on water users within the United States the burden of his failure to comply with the duties imposed upon him by the Treaty, as supplemented by the Protocol (Executive H, 78th Cong. 2d Sess.) and Memorandum of Understanding with the State Department (June 18, 1945, H. Doc. 717, 80th Cong. 2d Sess. (1948), p. A889), must be rejected as contrary to law and equity.

14. The defendant's order of May 16, 1964, as supplemented by the Regional Director's letter of May 19, 1964 (see Exhibit C-1), charging plaintiff with water ordered which cannot be used because of unavoidable circumstances, is clearly arbitrary in seeking to impose upon plaintiff what Congress and the defendant himself have previously recognized is an

impossible burden. It was because over-orders are an unavoidable occurrence that Congress authorized construction of the Senator Wash Dam two miles above Imperial Dam on the Colorado River (see Exhibit I incorporated herewith). Until defendant completes construction of this facility, not scheduled before 1966, he may not curtail plaintiff's vested rights to delivery of water vital to its irrigated economy on the arbitrary assumption that that structure is already in existence.

WHEREFORE, plaintiff prays:

1. That defendant be restrained and enjoined pendente lite from imposing the ten percent cut in delivery of Colorado River water to plaintiff to avoid irreparable injury to the farms and crops in the Yuma Mesa Unit area;
2. That the Court review the action of the defendant in accordance with the provisions of Section 10 of the Administrative Procedure Act (5 U.S. 1009);
3. That it be declared and adjudged that the defendant's order of May 16, 1964 violated the provisions of the Administrative Procedure Act, the Boulder Canyon Project Act, the Colorado River Storage Project Act, the Colorado River Compact, the Mexican Water Treaty, and the Act authorizing the Senator Wash Reservoir, and should be set aside and cancelled, and the defendant enjoined therefrom;
4. That the defendant pay to the plaintiff the costs of this action;

5. That the plaintiff have such order and further relief as  
is just and equitable.

CHARLES F. WHEATLEY, JR.  
ROBERT L. MCCARTY  
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THADD G. BAKER  
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217 Second Avenue  
Yuma, Arizona

Attorneys for Plaintiff

**COLORADO RIVER BASIN**

The map illustrates the extensive Colorado River Basin, which covers a significant portion of the southwestern United States and northern Mexico. The river originates in the Rocky Mountains of Colorado and flows generally southward, eventually emptying into the Gulf of California. Key features include:

- States and Territories:** California, Nevada, Utah, Arizona, New Mexico, and Wyoming.
- Cities and Towns:** San Francisco, Sacramento, Los Angeles, San Diego, Phoenix, and various smaller towns like Bakersfield, Fresno, and Tucson.
- Geographical Features:** The Colorado River, its major tributaries (e.g., Snake River, Green River, Little Colorado River), and numerous reservoirs and dams.
- International Border:** The boundary between the United States and Mexico is clearly marked.
- Inset Map:** A small map in the bottom left corner shows the location of the Colorado River Basin within the Western United States.

2240 O - 63 (Rev) 2-22

## Exhibit A



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

GILA PROJECT  
YUMA MESA DIVISION

Repayment Contract With Yuma Mesa  
Irrigation and Drainage District

1. THIS CONTRACT, made this 26th day of May, 1956, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly the Act of December 21, 1928 (45 Stat. 1057), as amended, the Act of August 4, 1939 (53 Stat. 1187), as amended, the Act of July 30, 1947 (61 Stat. 628), the Act of July 1, 1954 (68 Stat. 361), designated the Interior Department Appropriation Act, 1955, and the Act of January 28, 1956 (Public Law No. 394, 84th Congress, 2nd Session), and Title 45, and particularly Sections 45-1691 to 45-1698, inclusive, of the Arizona Revised Statutes, between THE UNITED STATES OF AMERICA, hereinafter referred to as the "United States", represented by the Secretary of the Interior, hereinafter referred to as the "Secretary", and YUMA MESA IRRIGATION AND DRAINAGE DISTRICT, an irrigation and drainage district created, organized and existing under and by virtue of the laws of the State of Arizona, and with its principal place of business at Yuma, Arizona, hereinafter referred to as the "District";

WITNESSETH:

EXHIBIT B



Explanatory Recitals

2. WHEREAS, the United States has constructed or partially constructed and is now engaged in the operation and maintenance of certain irrigation works situate in the State of Arizona, known as and designated the Gila Project, hereinafter referred to as the "project"; and

3. WHEREAS, the parties hereto desire to enter into a contract, in accordance with and subject to the provisions and conditions hereinafter set forth, providing, among other things, for the delivery to the District from project works heretofore constructed of a supply of water for the irrigation of the irrigable lands situate within the District not to exceed 25,000 irrigable acres, all of which lands are also situate within the Yuma Mesa Division of the project, hereinafter referred to as the "division", and for the operation and maintenance of carriage and distribution works to be utilized in connection with the irrigation of such lands and for the construction, operation and maintenance of such other works as may hereafter be required for the lands now or hereafter within the District;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Delivery of Water by United States

4. As far as reasonable diligence will permit, the United States will, from and after such time as this contract is binding on the parties hereto, from storage available in Lake Mead, divert at Imperial Dam and

deliver to or for the District through the Gila Gravity Main Canal, at or near Station 1099/56.69 of said canal, such quantities of water, including all other waters diverted for use within the District from the Colorado River, as may be ordered by the District, the present boundaries of which are described in the exhibit marked "Exhibit A", attached hereto and by this reference made a part hereof, and as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres situate therein; subject to the availability of such water for use in Arizona under the provisions of the Colorado River Compact and the Act of December 21, 1928 (45 Stat. 1057), and subject to:

(a) The availability of water for the division under the provisions of the Colorado River Compact, the Act of December 21, 1928 (45 Stat. 1057), and the Act of July 30, 1947 (61 Stat. 628); provided, however, that the quantities of water which the District shall be entitled to receive under this contract shall not, in any event, exceed an appropriate and equitable share of the quantities of water available for the division, all as determined by the Secretary;

(b) Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the

Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol, signed at Washington on November 14, 1944, supplementary to the treaty;

(c) The express understanding and agreement by the District that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13 (a) of said Act of December 21, 1928; and third, for power, and furthermore that this contract is made upon the express condition and with the express covenant that the United States and the District shall observe and be subject to and controlled by said Colorado River Compact and said Act of December 21, 1928, in the construction, management and operation of Hoover Dam, Lake Mead, canals and other works and the storage, diversion, delivery and use of water to be delivered to the District hereunder; and

(d) The other terms, conditions and provisions set forth in this contract;

Provided, however, that the maximum rate of diversion at Imperial Dam of water for delivery hereunder shall be five hundred and twenty (520) cubic feet per second; and provided, further, that the United States reserves the right temporarily to discontinue or reduce the amount of water to be delivered to the District whenever such discontinuance or reduction is made necessary for purposes of investigation, inspection, replacements, maintenance or repairs to any works whatsoever utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that as far as feasible the United States will give the District reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents, employees, successors and assigns shall not be liable for damages when, for any reason whatever, suspensions or reductions in delivery of water occur. Subject to the terms, conditions and provisions set forth in this contract, this contract is for permanent water service.

#### Measurement of Water

5. The water to be diverted for delivery hereunder will be measured at Imperial Dam by means of measuring devices installed or to be installed and operated and maintained by the United States; provided, however, that if for any reason any of said measuring devices are not installed, or if said measuring devices, subsequent to their installation, for any reason fail, in the opinion of the Project Manager, Yuma Projects Office, hereinafter referred to as the "Project Manager", to operate satisfactorily, the Project Manager will, from the best information

available, determine the amount of water received hereunder by the District. Said measuring devices and all controlling devices heretofore or hereafter installed shall be and at all times remain under the complete control of the United States, whose authorized representatives may at all times have access thereto over the lands and rights of way of the District.

Responsibility for Distribution and Use of Water

6. The District shall hold the United States, its officers, agents, employees and successors or assigns harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, carriage, handling, distribution or use of all water delivered or taken hereunder. The District shall not use any of the water delivered or taken hereunder on any lands other than those irrigable lands situate within the District and shall not cause or permit any such use.

Construction by United States and by District

7. (a) Pursuant to the Act of March 4, 1921 (41 Stat. 1367, 1404), the United States, at its option, may perform with funds contributed by the District any construction, maintenance or other work which is not otherwise provided for by this contract. The United States shall not undertake any such work unless funds therefor are advanced by the District as directed by the Secretary. The advance shall be accompanied by a certified copy of a resolution of the District's Board of Directors describing the work to be done and authorizing its performance by the



UNITED STATES  
DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

REGION 3

BOULDER CITY NEVADA 89005

IN REPLY  
REFER TO 3-100

MAY 19 1964

Mr. E. E. Winebarger, President  
Yuma Mesa Irrigation and Drainage District  
Route 3, Box 32  
Yuma, Arizona

Dear Mr. Winebarger:

At the meeting in Las Vegas on May 16, 1964, which you attended, Secretary Udall announced that the ten percent cut in diversions of water from the Colorado River for the remainder of this calendar year, which I asked for in my letter to you of May 5, 1964, now is mandatory. I therefore have the responsibility of applying this reduction to the gross diversions to the Yuma Mesa Irrigation and Drainage District.

The ten percent cut will be effective June 1, 1964, and must therefore be reflected in your water orders submitted on May 27, 1964, in accordance with our current operating procedure, for inclusion as a part of the Master Schedule.

The amount of 176,000 acre-feet was scheduled for diversion to the Yuma Mesa Irrigation and Drainage District for the seven-month period of June through December 1964. This amount will therefore be reduced by 17,600 acre-feet, to 158,400 acre-feet. You may, of course, augment this by utilizing drainage water pumped within the boundaries of your District. The Bureau of Reclamation does not ask that each week's diversion, or even each month's, be reduced by an arbitrary ten percent. So long as the total diverted at Imperial Dam for your use for the seven-month period beginning June 1, 1964, does not exceed 158,400 acre-feet, the objective of water conservation will have been achieved in this year of scant supply.

If you wish to vary the monthly diversions, please meet promptly with Project Manager T. E. Moser of our Yuma Projects Office and provide him with a revised schedule. This schedule should not, of course, be made unrealistic by deferring until later months in this year an unduly large portion of the 17,600 acre-foot reduction. Please submit a new schedule of estimated monthly diversions for the period June 1 through December 31, 1964, as soon as you have met with Mr. Moser, but not later than your May 27 water order submittal.

- Exhibit C-1 -



All water ordered for a given week by your District, and available for diversion at Imperial Dam, will be charged to your District account whether taken or not. To do otherwise would result in loss of content in Lake Mead to no purpose, and in excess water being available to Mexico.

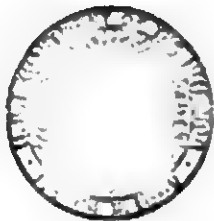
I appreciate the special requirements for citrus, as mentioned in your letter of May 12, 1964, to me. We have from time to time discussed the feasibility of a somewhat different method of irrigation for the citrus on the Yuma Mesa, most of which has now reached a stage of near maturity. While undoubtedly additional labor cost would be involved in a modified system of irrigation which did not flood the entire area, I am sure you will agree that as water becomes more and more short in supply these labor costs inevitably must be increased. They are very small in relation to the cost of replacing water in the Yuma area from a transbasin diversion. Such transbasin diversion, as discussed in Secretary Udall's Pacific Southwest Water Plan, will eventually be required. In the meantime, it is incumbent upon all of us that we use the existing supplies with the greatest of frugality. Experience has generally shown throughout all of Reclamation that closer attention to irrigation practices frequently results in greater net profit. The cut of ten percent is therefore not considered to be in any manner penalizing to the Yuma Mesa Irrigation and Drainage District.

Please call me if you desire to talk further regarding details of this reduction in water diversion.

Sincerely yours,



A. B. West  
Regional Director



UNITED STATES  
DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

YUMA PROJECTS OFFICE - REGION 3

BIN 151

YUMA, ARIZONA

IN REPLY  
REFER TO: 303-100

JUN 19 1964

Mr. E. B. Winebarger, President  
Yuma Moss Irrigation and Drainage District  
Route 3, Box 32  
Yuma, Arizona

Dear Mr. Winebarger:

Your letter of May 28, 1964 to Regional Director, A. B. West, has been carefully considered. We recognize that because a very large percent of the land in the District is planted to citrus, because the soil is sandy and because the irrigation system has no wasteways from which to absorb some of the cutback in water, the impact of the September 1963 storm probably had a greater affect on your District than on others. Accordingly, we are willing to give special consideration to your District in line with the proposal in your letter.

May I call your attention, however, to the fact that the tabulation of monthly diversions attached to your letter included return flow developed from the tile drainage system. Deducting this, the total diversions for the last seven months of 1962 and 1963 were 182,207 and 173,910 acre feet, respectively. Allowing the same amount for September 1963 as was used in September 1962, and averaging the two years, the total diversion for the June-December 1964 period would be 163,280 acre feet.

A tabulation of monthly diversions and the computation of the 1964 allowance, in the same manner as made in your letter, is shown on the enclosure.

I will appreciate your furnishing a revised schedule of diversions showing a seven-month total of 163,280 acre feet as soon as possible.

Sincerely yours,

T. E. Moser  
Project Manager

Enclosure

Exhibit C-2



Monthly Diversions to the Yuma Mesa  
Irrigation and Drainage District at the Pumping Plant  
(Acre Feet)

	<u>Use</u> <u>1962</u>	<u>Use</u> <u>1963</u>
June	31,750	33,718
July	35,631	36,244
August	36,108	35,912
September	31,163	24,434
October	19,480	18,637
November	16,688	13,896
December	11,387	11,069
	<u>182,207</u>	<u>173,910</u>

Total use for 1962 and 1963 = 356,117 A.F.

Total use adjusted for September 1963 rains = 362,846 A.F.

Adjusted average = 181,423 A.F.

Less 10% = - 18,142 A.F.

Seven-month allotment = 163,281 A.F.

Rounded: 163,280 A.F.

UNITED STATES  
DEPARTMENT of the INTERIOR

\*\*\*\*\*NEWS RELEASE\*\*\*\*\*

BUREAU OF RECLAMATION

DeWitt - 343-4662

For Release MARCH 26, 1964

SECRETARY UDALL ORDERS INTERIM RELEASES OF WATER FROM GLEN CANYON DAM TO  
COMPENSATE FOR LOW COLORADO RIVER RUNOFF

Secretary of the Interior Stewart L. Udall announced today that, on the recommendation of Reclamation Commissioner Floyd E. Dominy, he has ordered the outlet gates at Glen Canyon Dam to be opened March 26 sufficiently to release water stored in Lake Powell at a rate that will maintain storage in Lake Mead, behind Hoover Dam on the lower Colorado, at a minimum of 14.5 million acre-feet.

At the same time, Udall also indicated that any final decision would be postponed pending water runoff developments in the basin during the next two months.

The action is in accord with the Glen Canyon filling criteria which were first promulgated by the then Secretary of the Interior, Fred Seaton, in 1960, and approved by Secretary Udall in 1962 after careful review of the financial structure of the Hoover, Parker and Davis Dams on the lower Colorado River and the Federal investment in upper river structures as well.

"This is the only possible decision which can be made at this time," Secretary Udall said, "that will protect the Federal investment and achieve the long-range objectives of the total development program. The Bureau of Reclamation will make a continuing review of the runoff situation."

The minimum water level that must be maintained in Lake Mead to enable Hoover's generators to produce their rated capacity of 1,340,000 kilowatts is 1,123 feet above mean sea level, or 14.5 million acre-feet of storage.

Water will be released from Lake Powell on a varying rate schedule to facilitate the contractor's completion work at Glen Canyon Dam. Pending opportunity for firm appraisal of inflow, it is expected that the average release will exceed the average inflow by about 7,000 cubic feet per second.

Secretary Udall advised the Governors of the Upper Colorado River Basin States--Colorado, New Mexico, Utah, and Wyoming--of his decision in a reply to a joint letter from them dated March 17. Copies of letters are attached.

Secretary Udall said the releases will be made on an interim basis until the actual spring runoff of the Colorado River can be more accurately appraised. Present forecasts indicate this year's runoff will fall substantially below the long-term average for the second successive year.

"But a forecast made in March," Secretary Udall said, "is not what decides how much water will run down the mountain slopes in May, June, and July. According to the Department's water experts, this week's storm over the Upper Colorado River Basin, will do little more than bring the month's precipitation up to normal. It should also be remembered that the effects of normal or even abnormal runoff will not be felt until after mid-May. With Hoover already down to rated head, we are not warranted in permitting Lake Mead to fall below rated head for the Hoover powerplant pending further determinations.

"As of March 1, the median forecast for April-July runoff of the Colorado River was 4.7 million acre-feet. This week's storm does not change that forecast. If the actual runoff is near this figure, or gives promise of exceeding it, the possibility of gaining storage in Lake Powell by further replacement of Hoover power appears attractive. In other words, we might be able to resume storage in Lake Powell, let Lake Mead storage drop somewhat below the 14.5 million acre-foot mark temporarily, and make up for the resultant reduction in Hoover generation by purchases of power from outside sources," Secretary Udall explained.

"However, at least until we have a better knowledge of the 1964 water supply, we must live with the filling criteria for Lake Powell announced in 1962. Those criteria require that until Lake Powell reaches its minimum power-producing level, the storage there shall be available for release to maintain the rated head at Hoover Powerplant."

In recommending the increase in releases from Lake Powell, Commissioner Dominy pointed out that the water level at Lake Mead has been dropping, as was expected, since Lake Powell storage began March 13, 1963. At that time, the Commissioner reported, there were over 22 million acre-feet of water in Lake Mead.

"Lake Mead is forecast to fall below the critical 14.5 million acre-foot mark on March 28, if releases from Lake Powell are continued at no more than the present rate of 4,000 cubic feet per second," Commissioner Dominy said.

"The planned releases will maintain Lake Mead at about the rated power-producing level. The stepped up releases through the gates at Glen Canyon Dam will begin March 26, since it will take the water two days to reach Hoover Dam, 370 miles downstream."

Storage in Lake Powell now stands at about 3.1 million acre-feet. The Lake is 250 feet deep at Glen Canyon Dam.

x x x

UPPER COLORADO RIVER GOVERNORS

Colorado, New Mexico, Utah, Wyoming

March 17, 1964

Dear Secretary Udall:

It has been called to our attention that under a strict adherence to the "General Principles to Govern, and Operating Criteria for, Glen Canyon Reservoir and Lake Mead During the Lake Powell Filling Period," as promulgated, there will be very little if any chance of storing sufficient water behind Glen Canyon Dam to generate electric energy in 1964. The purpose of the criteria was to provide guide lines as the basis of securing a practical approach to the problems of reservoir filling within a reasonable exercise of Secretarial discretion, while, at the same time, protecting the interests of water and power users.

Now, at a time when water should be accumulating at Glen Canyon, we find that an exceptional circumstance in the form of a "bad" water year has intervened--a circumstance that could preclude the filling of the minimum power pool at Glen Canyon unless wise and judicious use is made of the available water.

On the basis of water and power analyses that have been made we are convinced that it would be practicable to store sufficient water at Glen Canyon to cause the generators to produce energy by August 1, 1964, and that this objective can be attained without injury to downstream water or power users. We understand that a solution to this problem will entail considerable leadership and cooperation among the many diverse Colorado River Basin interests, including your Bureau of Reclamation.

From the information presently available it appears that a policy decision regarding the operation of the various facilities on the Colorado River under the jurisdiction of the Secretary of the Interior should be made prior to April 1st in order to insure power production at Glen Canyon in 1964.

Both private and public entities in the Upper and Lower Basins are willing to cooperate fully to make possible the generation of power at Glen Canyon in 1964. We are also confident that it is in the best interests of everyone concerned to arrive at a method of filling the minimum power pool at Glen Canyon at the earliest possible date.

We know that you are informed regarding the many ramifications of this complex problem. We, therefore, urge that the Department of the Interior adopt a policy under which the minimum power pool at Glen Canyon will be filled in 1964 without detriment to other water and power uses in the Colorado River Basin.

In order to reach these objectives we offer our full cooperation, and respectfully request that you consult with us in the development of your plans with reference to the problems herein outlined.

Sincerely yours,

John A. Love  
Governor of Colorado

Jack M. Campbell  
Governor of New Mexico

George D. Clyde  
Governor of Utah

Clifford P. Hansen  
Governor of Wyoming

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Office of the Secretary  
Washington 25, D. C.

Dear Governor Clyde:

We appreciate very much the letter of March 17 from you and the other Governors of the Upper Colorado River Basin States concerning the operating criteria for Glen Canyon reservoir, which is now known as Lake Powell, and Lake Mead during the Lake Powell filling period. We join with you in your expressions of concern over release of water from Glen Canyon reservoir before the lake has reached the operating level.

Regrettably, and for the time being, we can see no satisfactory alternative to undertaking immediate discharge of sufficient water from Glen Canyon reservoir to maintain the level of Lake Mead at the minimum operating level of 1,123 feet above mean sea level, or 14.5 million acre-feet of storage. A press release announcing this interim decision is attached.

As the press release explains, there is still a possibility, albeit an unlikely one, that early spring storms could increase the anticipated runoff to the point where Lake Mead storage could be permitted to drop somewhat below the 14.5 million acre-foot mark temporarily. The resultant reduction in Hoover generation would then be made up by purchase of power from outside sources. Any major interim purchase of power, of course, would require special fiscal arrangements inasmuch as funds are not now programmed for that purpose.

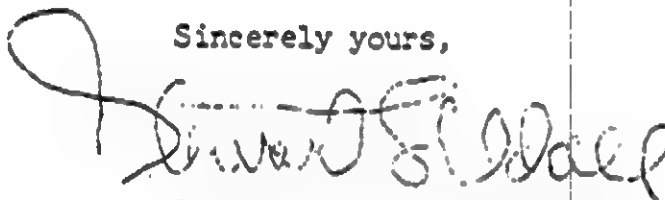
However, the existing situation is such that at least until we have a better knowledge of the 1964 water supply, we have no alternative but to live with the filling criteria which were first promulgated in 1960 by my predecessor Secretary of the Interior, Fred Seaton. After careful review of the criteria in light of the administration's fiscal policy, I approved the criteria in 1962 as the best procedure to protect the Federal investment already made in Hoover, Davis, and Parker Dams, as well as the investment in the Upper Basin and the objectives of the total development program.

I may add that up to the present time, although we have read newspaper stories concerning an offer by Upper Basin private utilities to supply replacement power, we have had no proposal with necessary data such as rates and the means the utilities would use to get the power to the

lower basin, particularly California. While under present circumstances, we could not avail ourselves of the utilities' offer because of the critical outlook, we hope these data will be forthcoming immediately. It will be necessary to have these data without delay if the proposal is to be considered when the water situation is reviewed and a final decision reached concerning a course of action on operation of the river in this critical water year. I have directed the Commissioner of Reclamation, through his Regional offices, to maintain close and continuing contact with the utilities and to keep me advised on a day to day basis of any changes in the water situation, in order that necessary decisions can be made on a timely basis.

I should also explain that if the presently forecast mean runoff occurs in 1964, Lake Powell is expected to remain at approximately its present level or even to increase somewhat during the runoff period which coincides with the principal recreation demands on the lake. After the runoff, of course, if there is no material improvement in the water outlook, the lake may be drawn down considerably to meet necessary downstream commitments.

Sincerely yours,



Secretary of the Interior

Hon. George D. Clyde  
Governor of Utah  
Salt Lake City, Utah

Identical letters to:  
Governor John A. Love, Colorado  
Jack M. Campbell, New Mexico  
Clifford P. Hansen, Wyoming





UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

REGION 3  
BOULDER CITY, NEVADA

IN REPLY  
REFER TO 3-400

May 5, 1964

Mr. T. R. Meyer, Manager  
Yuma Kosa Irrigation and Drainage District  
Route 3, Box 32  
Yuma, Arizona

Dear Mr. Meyer:

This will confirm my telephone call to you yesterday afternoon, in which I requested your earnest consideration of a ten percent reduction in diversion of water from the Colorado River for the remainder of the year, commencing May 15, 1964.

As we have discussed from time to time, the outlook for Colorado River runoff is very poor for the April-July period of this year. Coupled with the filling problems at Lake Powell, an unusually difficult situation is posed.

I should appreciate receiving your reaction to the proposed cut by May 11, 1964, preferably in writing. The cut for your District would be computed as ten percent of the remaining scheduled diversion for this calendar year, 193,000 acre-feet, or a reduction of 19,300 acre-feet.

Sincerely yours,

  
A. B. West  
Regional Director



☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆news release

capacity and energy for water in Lake Mead between elevations 1,123 and 1,083 by following the plan set out in the attached statement entitled "Operation of Lake Mead Below Elevation 1,123 by Reason of Resumption of Storage Operations at Lake Powell."

The Bureau of Reclamation has reviewed all power replacement proposals that have materialized.

The City of Los Angeles and the Southern California Edison Company have made proposals to sell or exchange power with the Bureau growing out of exploratory talks undertaken by the Bureau as far back as mid-February in anticipation of the possibility of a Hoover power replacement program. At that time, the Bureau of Reclamation naturally turned to the closest available suppliers.

Four private utilities in the Upper Basin, in combination with the Arizona Public Service Company in the Lower Basin, made a proposal, first submitted to the Upper Colorado River Commission, to furnish certain limited quantities of capacity and energy on an exchange basis. The Arizona Public Service Company also made a separate proposal whereby capacity and energy would be sold directly to the Bureau.

Under the Upper Basin utilities' proposal as presented, the Bureau of Reclamation would have to take capacity in blocks of 50,000 kilowatts. Capacity in such large blocks could not be fully used under some circumstances and in others would require certain complicated switching arrangements at the Hoover powerplant. These arrangements would have varying technical and economic disadvantages and would pose some very difficult problems of arrangement.

Another aspect, which I am sure you realize but which is nevertheless of such importance as to be mentioned specifically, is that even an exchange of the nature proposed would not eliminate the cost burden to the Upper Basin Fund. The cost would be one of loss of revenues from power which must be paid back rather than sold, rather than one of outlay of cash, but it would nonetheless affect the Basin Fund.

Taking all of these factors into account, the Bureau of Reclamation determined that a direct purchase program with the Lower Basin utilities would be less costly, less complicated, and would provide needed flexibility.

A decision to resume storage at Lake Powell is not without hazards and risks. By mid-July, we will know with reasonable assurance what the actual runoff will be for this season.

All of the technical experts, both those of the Hoover power allottees and those of the Bureau of Reclamation, advise that to attempt to operate the Hoover units below elevation 1,083 is too risky.

In the event these units would have to be shut down by water dropping below this level, a power replacement program in the magnitude of 1,340,000 kilowatts of power would be required. This kind of capacity is simply not available.

If it were available, costs would obviously be prohibitive. For this reason alone, maintenance of elevation 1,083 at Lake Mead is a must even though this would require drawdown of Lake Powell to be resumed in Mid-July.

If it appears in July that while Lake Mead can be maintained at elevation 1,083 but Lake Powell nevertheless cannot reach operating level, the question of retaining in Lake Powell the water then in storage in that reservoir or of releasing it to restore the level of Lake Mead will have to be faced. The cost to the Upper Basin Fund might well be less if, under those circumstances, Lake Mead were to be restored and the power-purchase program terminated or reduced.

Another hazard involved here is that, even though Lake Powell may go into operation at its minimum level, the runoff next spring could be so low as again to require the lowering of Lake Powell beyond the minimum operating head in order to keep Lake Mead at even a minimum level. In this event, the Government may well be obligated to buy power at the expense of the Upper Basin fund to supply its Upper Basin power sales contracts as well as the Hoover power allottees.

While, in view of the present forecast, it may now appear likely that Lake Powell can reach minimum operating level this summer, resumption of filling should be undertaken only with everyone's eyes wide open.

If the expected runoff does not materialize, it would, of course, be folly to continue storage at Glen Canyon Dam, and not produce power at either dam.

This Department and the states of the Colorado River Basin are entering a new era of water management. The free and easy days of water use are over and the era of water conservation must now begin. The Colorado is but a single river, and from this point forward every acre foot of water saved anywhere on the system is water saved for all.

Consequently, a major topic of discussion at my meeting with the Upper Basin Governors and water officials in Salt Lake City on Friday will

be water conservation. And at Las Vegas, on Saturday, I hope to be in a position, with the cooperation of Lower Basin users, to announce and implement a voluntary water conservation program which should produce water saving that will amount to a half million acre feet in 1964.

Prudence demands that all of us assume, at this point, that the drouth conditions which have prevailed during the past two years will continue in 1965. If this happens, all of us face the choice that further emergency conservation measures will be imperative. We must instill in all of our water users that idea that new water conservation practices must be instituted wherever possible and actions must be taken which will stretch our existing supplies to the limit.

We are working with the Department of Justice to curb illegal diversions on the lower reaches of the river. However, I am informed that the amount of water that can be saved by this means probably will not exceed an annual consumptive use rate of 45,000 to 60,000 acre-feet.

X X X X

## OPERATION OF LAKE MEAD BELOW ELEVATION 1123 BY REASON OF RESUMPTION OF STORAGE OPERATIONS AT LAKE POWELL

The "General Principles to Govern, and Operating Criteria for, Glen Canyon Reservoir (Lake Powell) and Lake Mead during the Lake Powell Filling Period (27 F.R. 6851, July 19, 1962)," herein referred to as the "Filling Criteria," provide that until Lake Powell attains minimum power operating level (about elevation 3490) any water stored in Lake Powell is to be available to maintain Lake Mead at elevation 1123 (rated head at Hoover Powerplant).

In order to resume filling operations at Lake Powell under runoff conditions which would necessitate drawing Lake Mead below elevation 1123, the Hoover allottees must be maintained in the same position that they would have been in had Lake Powell storage not been resumed. By so doing, water in Lake Mead may be drawn down below elevation 1123 consistent with the objectives of the Filling Criteria. The following conditions will therefore be observed effective upon announcement by the Secretary of the Interior:

1. Outflow from Lake Powell will be reduced to not less than 1,000 c. f. s.
2. Under no circumstance will Lake Mead be drawn below a minimum power operating level of elevation 1083 as a result of storage of water in Lake Powell. Any storage in Lake Powell will be used to avoid drawing Lake Mead below elevation 1083.
3. In addition to the allowance for deficiencies in firm energy generation determined pursuant to the Filling Criteria, the United States will replace deficiencies in Hoover Powerplant capacity and energy available to the Hoover allottees which result from the lowering of Lake Mead below elevation 1123 by reason of storage of water in Lake Powell. The United States will also relieve the allottees of costs of extraordinary maintenance of the Hoover turbines and generators resulting from such lowering. Costs incurred by reason of this paragraph will be charged to the Upper Colorado River Basin Fund and will not be subject to reimbursement from the separate fund identified in Section 5 of the Act of December 21, 1928, or otherwise charged against the Boulder Canyon Project.
4. Until Lake Mead is returned to elevation 1123, and subject to condition 2 above, Lake Powell will be permitted to exceed minimum power operating level only to the extent inflow exceeds turbine capacity, or as required to assure operation at not less than minimum power operating level.
5. When actual runoff through the month of June becomes known, early in July, the likelihood of attaining minimum power operating level at Lake Powell in calendar year 1964 will be reasonably determinable. A decision will be made at that time whether to continue storage at Lake Powell or to release water stored therein in order to raise the elevation of Lake Mead. In arriving at that decision, consideration will be given to a comparison of estimated costs to the Colorado River Storage Project and the decision will be made after consultation with appropriate interests of the Upper and Lower Colorado River Basins.

# PERTINENT STATISTICS, LAKE POWELL FILLING

LAKE MEAD			LAKE POWELL	
	<u>Elevation</u>	<u>Content</u> (Million acre-feet)	<u>Elevation</u>	<u>Content</u> (Million acre-feet)
Normal Highwater	1222	27.3	3700	28
Rated Head on Power Plant	1123	14.5	3600	15
Min. Power Pool	1083*	10.7	3490	6.1
Nevada Pumps (Min. level)	1050	8.0		

\*Elevation below which turbines vibrate,  
excessive cavitation takes place

Lake Powell, March 26, 1964  
3,120,000 acre-feet

Lake Powell, May 8, 1964  
2,576,000 acre-feet

Colorado River, Lee Ferry, April-July  
runoff forecast, May 1, 1964

Additional storage needed for  
minimum power head at  
Lake Powell, 3.6 million acre-  
feet

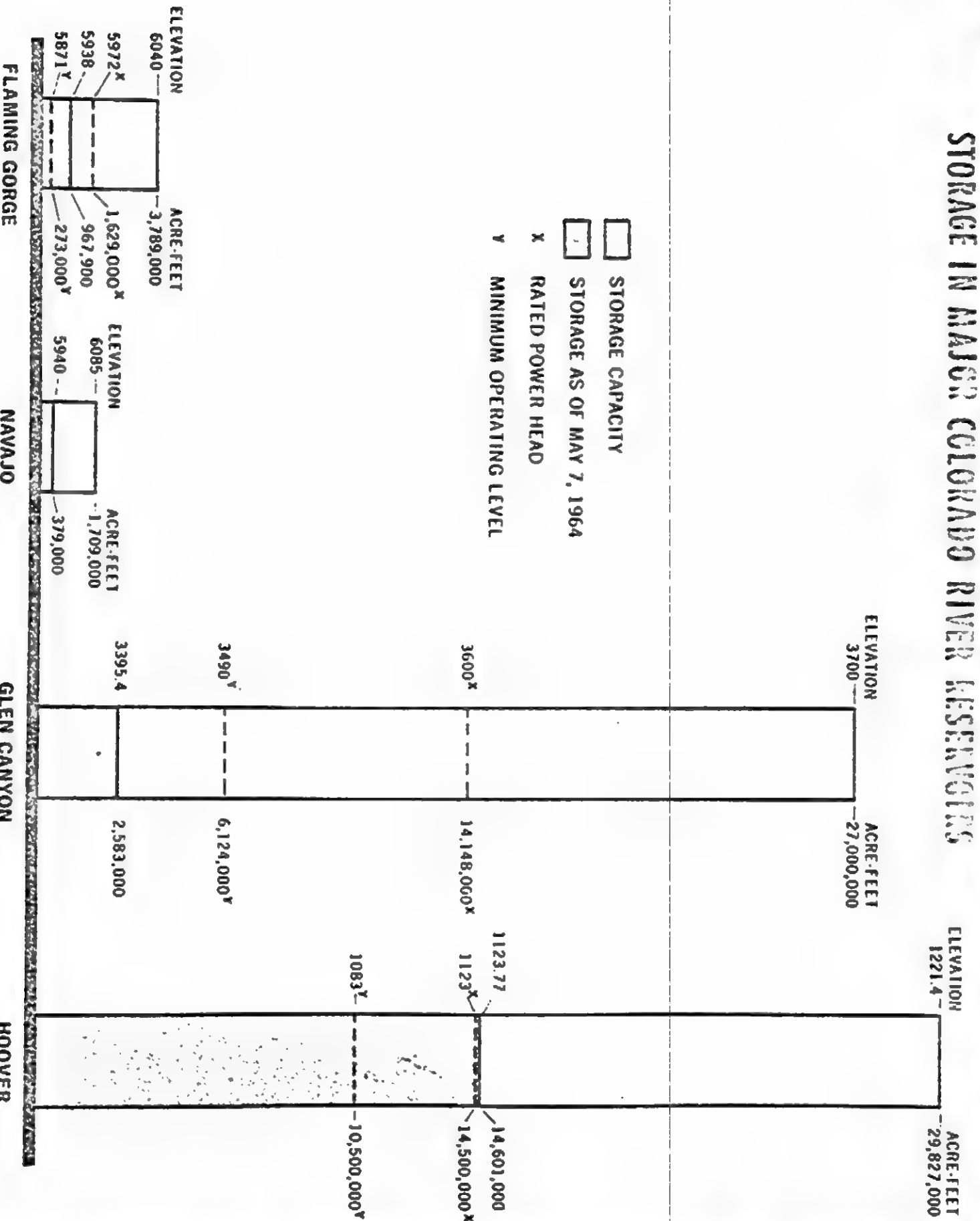
Minimum	3,600,000 acre-feet
Mean	5,100,000 acre-feet
Maximum	6,600,000 acre-feet

Note: With a recurrence of the lowest recorded precipitation during the last 50 years for May, June and July, the April-July runoff this year could be as low as 3,000,000 acre-feet. A corresponding maximum could be 8,400,000 acre-feet.

5/10/64

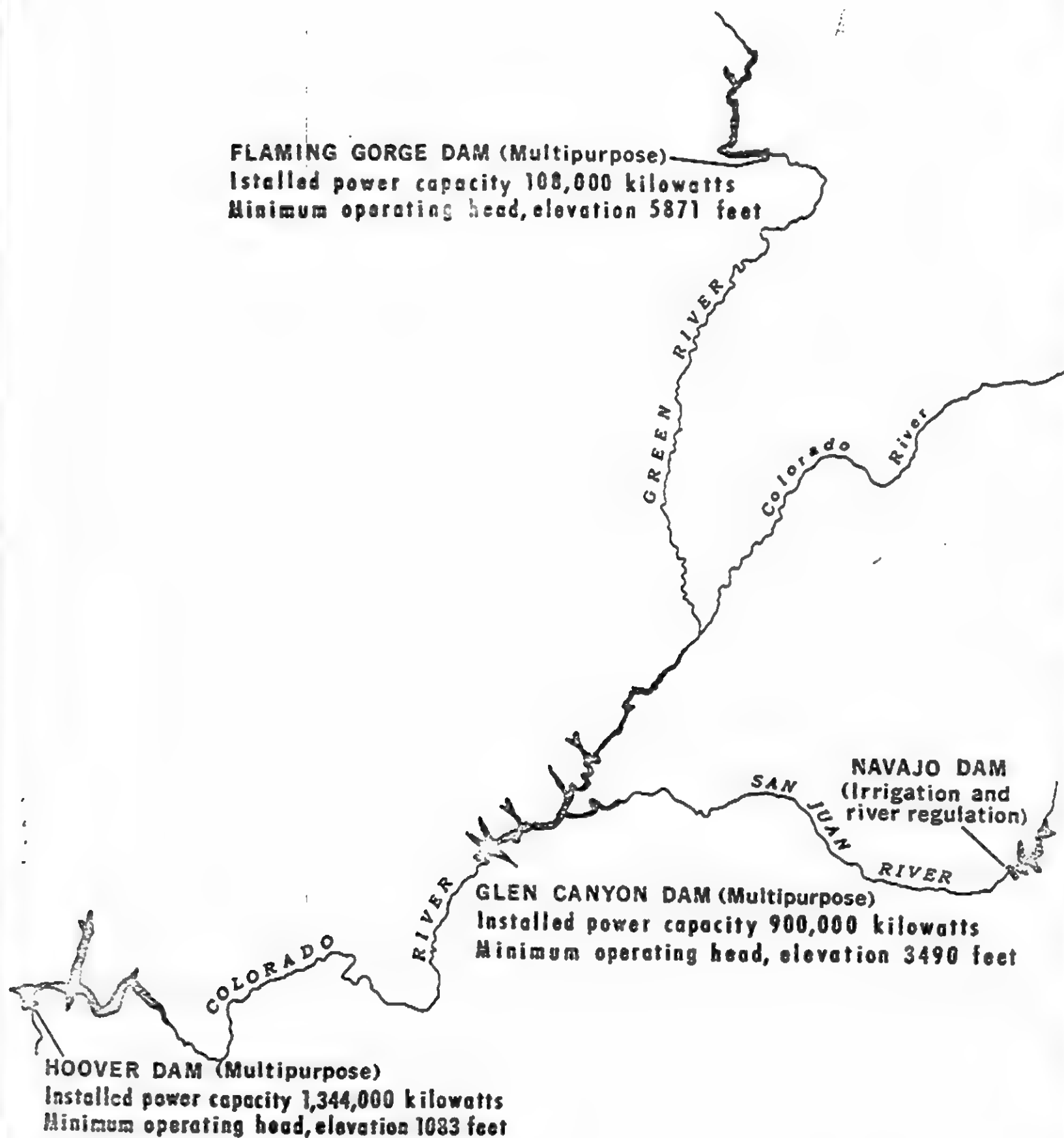


# STORAGE IN MAJOR COLORADO RIVER RESERVOIRS





## **COLORADO RIVER MAJOR DAMS AND RESERVOIRS**



\*\*\*\*\*news release

Peterson - 343-4662

LOWER COLORADO RIVER BASIN UTILITIES TO SUPPLY REPLACEMENT POWER FOR HOOVER DAM

Supplying the replacement power will be the Arizona Public Service Company, the Southern California Edison Company, and the City of Los Angeles Department of Water and Power.

The Upper Basin utilities' proposal for power on an exchange basis was submitted in a letter to the Bureau of Reclamation from the Utah Power and Light Company, the Public Service Company of New Mexico, the Public Service Company of Colorado, and the Pacific Power and Light Company, which serves some areas in Wyoming.

At the same time, the Bureau of Reclamation declined the offer of the Salt River Power District of Arizona to supply replacement power, even though the terms were attractive, because its power would not be available until January 1965.

- Exhibit G -

bring the level of that new reservoir behind Glen Canyon Dam up to minimum operating head for the Glen Canyon power plant. The decision to resume storage of water in Lake Powell was announced May 11 by Secretary of the Interior Stewart L. Udall.

In a letter to the Upper Basin utilities, Commissioner of Reclamation Floyd E. Dominy explained that, "Your proposal, no doubt out of necessity in relation to sizes of units in your combined system and to the benefits which you would gain through return of capacity at your scheduling, imposes restrictions and conditions which, unfortunately, are not compatible either with the need for Hoover replacement power or with the marketing program for Glen Canyon power."

No such conditions were imposed by the other utilities in their offer to provide replacement power, as needed, on a straight sales basis, Commissioner Dominy said.

He also pointed out that because of transmission and transformation problems, the proposed exchange of power would not eliminate the need to purchase power elsewhere, in any event, and also that no monetary savings over purchase of power would be achieved because the power supplied to the Government on an exchange basis would later have to be repaid when otherwise it could be sold.

x x x

\*\*\*\*\*news release

343-4662

UDALL EXPRESSES OPTIMISM ON FILLING OF LAKE POWELL; SPEEDUP OF GENERATOR  
INSTALLATION ORDERED AT GLEN CANYON DAM TO MEET SEPTEMBER START

On May 11, Lake Powell contained approximately 2,560,000 acre-feet of water. Now it has 3,948,000 acre-feet. At minimum power operating level it will contain 6,124,000 acre-feet. Optimum storage for power generation is slightly over 14 million acre-feet.

In anticipating a mid-September operating date for the first Glen Canyon generator, Commissioner of Reclamation Floyd E. Dominy said arrangements have been worked out with the contractor, Ets-Hokin and Galvan, Inc., San Francisco, to have the first big generator ready for testing by late August.

Speedups have been arranged for other generators. A second unit, which was to have been ready by December 1, 1964, will be ready for testing by September 10, according to the revised schedule. Testing dates for two other units have been moved up from March 1, 1965, to December 1, 1964, and from July 1, 1965, to February 15, 1965, respectively.

The expedited schedule is coordinated with the filling schedule at Lake Powell. Water is now backing up behind Glen Canyon Dam at a rate which will bring it up to operating level by mid-September if present median runoff forecasts hold up.

The Colorado River, during the past week, was flowing into Lake Powell at a rate of 55,000 cubic feet a second. Cold weather slowed down the snowmelt over the weekend, however, and it is now running only about 35,000 cfs. Releases to the river below Glen Canyon Dam have been sharply curtailed during the filling process. When Lake Powell reaches operating level, it is anticipated that the entire riverflow will be turned downstream without further storage until the level of Lake Mead is restored. The filling operation is being conducted in such a manner as to get both the Glen Canyon and Hoover Dam powerplants at full operating head as promptly as possible, Secretary Udall explained.

Glen Canyon Dam and Lake Powell form a principal river control and storage unit of the Colorado River Storage Project, authorized by Congress for construction and operation by the Bureau of Reclamation.

x x x

\*\*\*\*\*news release

343-4662

SENATOR WASH RESERVOIR TO BE MAJOR WATER SAVER ON LOWER COLORADO

The small earthfill Bureau of Reclamation dam, at the river-end of Senator Wash on the California shore of the river, will save up to 265,000 acre-feet of water each year when it is completed in time for the 1966 water year. Reclamation Commissioner Floyd E. Dominy explained that Regional Director A. B. West of Boulder City, Nev., recommended construction of the dam several years ago and it was authorized and funds appropriated by Congress as the water situation on the Colorado River became acute.

The Senator Wash Regulating Reservoir will hold water arriving at Imperial Dam which has been ordered by water users, but not needed due to rain, cold, or other unexpected weather conditions. Such water now is lost downstream, but in the future will be pumped into the off-stream Senator Wash Reservoir. It then will be released to the river, as needed, to fill water orders.

Director West said that with its capacity of 13,400 acre-feet of water, the reservoir also will give the Bureau of Reclamation much greater flexibility in water scheduling. At present, water for irrigators and cities on the lower Colorado River must be released 148 miles upstream at Parker Dam three days before it is needed at Imperial Dam. During this three-day period water needs often change, resulting in over-deliveries at Imperial Dam. After completion of Senator Wash Regulating Reservoir, such water can be held for later use in this country, and in meeting delivery schedules to Mexico under the Mexican Water Treaty.



Conservation programs now in effect and planned would conserve an estimated 680,000 acre-feet of water on the main stream of the lower Colorado River each year. These programs, in addition to Senator Wash Regulating Reservoir, include eradication of nonbeneficial water-consuming plants, channelization, and ground water recovery.

Construction of the 85-foot high, 2,100-foot long earthfill dam, three dikes, a reversible pump-generating plant and related works is progressing on schedule under a \$5 million contract awarded last February to M. M. Sundt Construction Company, Tucson, Ariz. Major work thus far includes excavation of the cutoff trench for the dam and placing of material. Completion is expected not later than February 1966.

The Senator Wash Dam and Regulating Reservoir have an exceptionally high benefit-cost ratio. For every dollar invested in the project, benefits amount to \$13.82.

Costing nearly \$8 million, the project will conserve water valued at about \$5½ million a year. It also will generate hydroelectric power valued at \$11,000 a year when water is released from the reservoir through the dual purpose pumping-generating plant. Power production will partly offset the power costs for pumping water out of the river for storage.

x x x

(HEADING OMITTED)

Civil Action No. 1551-64

Filed July 8, 1964

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, by its attorneys, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure moves the Court for a preliminary injunction to restrain the defendant, pendente lite, from enforcing an order issued May 16, 1964, effective June 1, 1964, reducing by ten percent the delivery of irrigation water to the plaintiff, the wrongful effect of which will be to deprive plaintiff of vested property rights to the use of such water contrary to law. A preliminary injunction is necessary to prevent irreparable injury to the crops now growing in the project which will result unless the applicability of defendant's order is stayed pending the outcome of the litigation. A statement of the material facts, supported by affidavits, together with the specific points of law and authorities upon which plaintiff relies, is attached hereto.

Respectfully submitted,

CHARLES F. WHEATLEY, JR.  
ROBERT L. MCCARTY  
McCarty and Wheatley  
1201 Walker Building  
Washington, D. C. 20005

THADD B. BAKER  
Brandt and Baker  
217 Second Avenue  
Yuma, Arizona

THE DEFENDANT'S ORDER OF MAY 16 WAS ARBITRARY AND  
BEYOND HIS AUTHORITY

- a. The issuance of the order by the Defendant without notice or hearing to plaintiff, constituted illegal, arbitrary action depriving plaintiff of its vested property rights to the use of Colorado River water in violation of Section 5 of the Administrative Procedure Act and the Fifth Amendment to the Constitution.

Prior to his oral announcement at a press conference in Las Vegas on May 16, 1964 of his mandatory ten percent reduction on consumptive use water deliveries, the defendant accorded plaintiff no notice of the order or opportunity for a hearing. Further, the defendant admitted that the order was issued without even an ex parte investigation by the Department of the respective water using practices and policies in the various projects in the Lower Basin. In a colloquy with Governor Brown of California, he states:

"GOVERNOR BROWN: ... The Secretary has made it very clear this ten per cent reduction, but there is one thing Mr. Secretary, that we would like very much to have in California.

"We would like to have you make a study of the conservation practices immediately so that in the future if it becomes necessary to cut down that it wouldn't be based upon an arbitrary order but would be based upon a factual situation.

"Would that be possible ?

"SECRETARY UDALL: Governor, I think this is a very good point and I think that we should carry it out and I know Mr. West and his people [ Bureau of Reclamation employees ] are going to have to do a lot of work and they are going to have to have a lot inquiry into a lot of practices and problems that are common in the Basins, and I think there is an element of arbitrariness in the approach that we have taken perhaps, but in terms of carrying something out our choices are limited at this time." (Official Transcript of Press Conference, May 16, 1964, pp. 104-105; emphasis supplied.)

(HEADING OMITTED)

Civil Action No. 1551-64

AFFIDAVIT

STATE OF ARIZONA )  
                              ) ss.  
County of Yuma        )

E. E. WINEBARGER, being first duly sworn upon his oath deposes and says:

That he is a resident of Yuma County, Arizona, and has been since 1952; that he originally received a homestead under the Veteran Homestead Act; that he is presently the owner of 215 acres within the Yuma Mes Irrigation and Drainage District;

That he is the duly elected President and member of the Board of Directors of the Yuma Mesa Irrigation and Drainage District; that the District is a political subdivision of the State of Arizona; that further, the lands within the District are a part of the Yuma-Mesa division of the Gila Project as reauthorized by the Gila Project Reauthorization Act of July 30, 1947, (61 Stat. 628).

The the United States Government constructed diversionary works and delivery canals to serve 19,970 acres within the District, that waters for the District are diverted from the Colorado River through the Gila Main Gravity Canal and by pump lift put into the canal system of the District; that the canal system is fully lined and is a closed system without wasteways

Exhibit 1

or spill ways. That there are approximately 125 miles of farm ditches within the District, 120 of which are concrete lined;

That on the 26th day of May, 1956, the Irrigation District entered into a repayment contract with the Secretary of the Interior to repay some 5.5 million dollars in capital costs incurred by the United States pursuant to the reclamation acts; that the said contract further provides for permanent water service for the lands within the District from the waters of the Colorado River stored at Lake Mead;

That beginning on January 1, 1959, the District took over the care, operation and maintenance of the system from the Bureau of Reclamation and has operated the same since that date; that the Yuma Mesa Irrigation and Drainage District is situated upon a mesa South and East of the City of Yuma, the soil consists of dry, sandy loam and that by reason of the mild winter climate and other economic factors within the past ten (10) years the District has been substantially all plated to citrus; that at the present time there are approximately 7,613 acres of young non-producing citrus within the District and approximately 6,351 acres of producing citrus; that in addition to citrus, the following crops are grown; 615 acres of cotton; 415 acres of peanuts; 2,038 acres of alfalfa, hay and seed and 231 acres of grapes;

That within the past three (3) years, approximately 3,000 acres of citrus has been planted and approximately 850 acres of citrus have been interplanted with young trees for better utilization of existing acreages; that by reason of the extremely dry climate and high temperatures throughout the summer months and the character of the soil, the non-producing

and young citurs [sic] is extremely sensitive to lack of water; that the diversion requirements and application of water within the District is not a constant for any week, month or year, but wholly dependent upon cropping patterns and weather;

That a cutback in water of 10% based upon the 1963 water use is unrealistic and in no manner correlates with the demand for water under the cropping patterns and weather conditions in 1964;

That since the District operates a closed concrete lined system, all waters delivered to the District are applied at the farm level without spilling or wastage; that a cut of 10% in water usage would jeopardize the citrus industry and all farming upon the Mesa.

That the District places a water order once a week based upon their best estimate of plant need and weather conditions; that water ordered for diversion at Imperial Dam are released at Parker Dam some 150 miles up river and takes 72 hours for delivery; that the receipt of water between Parker Dam and Imperial Dam is made uncertain by the illegal usage of water by squatters and others within this reach of the river which the defendant has taken no action to control; that plaintiff has no control over this water or weather conditions during this 72 hour delivery period; that, therefore, to charge the District for all waters ordered but not delivered is arbitrary and causes further reduction in the available usage of water at the farm level and of necessity by reason of the order increases the Secretary's cutback for beyond 10%.



That a loss of citrus acreage upon the Mesa would jeopardize not only the personal investments of the farmers within the District but would jeopardize the United States' investment in these acreages as well.

Dated this 26 day of June, 1964.

/s/ E. E. Winebarger  
E. E. Winebarger

Subscribed and sworn to before me  
this 26 day of June, 1964, by E. E.  
Winebarger.

/s/ [illegible]  
Notary Public

My Commission Expires:  
9-15-67

Civil Action No. 1551-64

[illegible]

That he is a resident of Yuma County, Arizona, and has been engaged in the citrus business since 1947; that he is a partner in the firm of Curtis, Woodman & Roach of Yuma, Arizona; that the partnership is engaged on behalf of itself and others in the development, farming and packing of citrus for some 8,000 acres in Yuma County; that in addition to these activities, the partnership maintains upon the Yuma-Mesa one of the largest citrus nurseries in the United States; that he is a member of the Board of Directors of the Sunkist organization.

That in his opinion, the cultural and water practices upon the Yuma-Mesa are consistent with the best cultural and water practices throughout the industry.

That the Yuma-Mesa, as a citrus growing area, is distinguished and unique from other citrus areas throughout the United States by reason of the extremely sandy soils and high summer heat; that therefore, an adequate and available source of water is imperative to the proper growth

[ 51 ]

of the citrus orchards and the production of a commercial fruit crop; that whereas proper moisture control is at all times essential to the production of a crop and the growth of citrus trees, the fruit crop is especially vulnerable during the setting period at which time the fruit is properly formed; that a lack of proper moisture control during the setting period will result in an immediate shelling or dropping of fruit and a consequent loss of the fruit crop. That the 1964-65 fruit crop on the Yuma-Mesa has been retarded by reason of a subnormal cool Spring which will advance the setting period to approximately August 1, 1964.

That since there is no wastage of water in the form of spillways or otherwise in the carriage and distribution of water upon the Yuma-Mesa, any consequent reduction in the delivery of water to the Yuma-Mesa will result in a reduction in the application of water at the farm level; that a reduction of water at the farm level will require more frequent application of water to the citrus orchards and a consequent increased strain upon existing irrigation district delivery laterals; that a 10% reduction of water available to the Yuma-Mesa under normal extremes of Summer temperatures would result in a disastrous loss of the 1964-65 crop and permanent impairment of the orchards upon the Yuma-Mesa; that further, by reason of the vulnerability of citrus during the Fall months to an early frost, it is imperative that adequate water be available so that the respiratory system of the trees be in a position to meet the wilting effect of the frost; that a 10% reduction in water would have an adverse cultural effect upon the trees and hence

place the citrus industry on the Yuma-Mesa in a position of taking an extremely hazardous gamble on the weather with the possibilities [ sic ] of economic ruin.

DATED this 25 day of June, 1964.

/s/ Glen G. Curtis  
GLEN G. CURTIS

SUBSCRIBED AND SWORN to before me this 25th day of June, 1964, by GLEN G. CURTIS.

/s/ [ illegible ]  
Notary Public

My commission expires:

[ illegible ]

(HEADING OMITTED)

Civil Action No. 1551-64

AFFIDAVIT

STATE OF ARIZONA     )  
                              ) ss  
County of Yuma         )

H. W. ORMSBY, being first duly sworn upon his oath deposes and says:

That since 1959, he has been a resident of Yuma County, Arizona, and presently is the owner of citrus acreages and is a partner and manager of McMillan Nursery Company, Yuma, Arizona, a nursery specializing in the growing and sale of citrus stock; that in 1938 he received his Bachelor of Arts degree from Santa Barbara College in California, with a major in Horticulture; that subsequently, he was an instructor in Horticulture at Santa Barbara College for approximately five (5) years; that he was also employed for eleven (11) years as the field manager for Ventura Coastal Lemons Co., Ventura, California, operating approximately 1,500 acres of citrus and field crops; that he was further employed as Vice-President of Ventura Processors, an affiliate of four citrus packing houses and a citrus juice processing plant. That while employed at Ventura he was in direct charge of citrus and field crops and management of all cultural operations pertaining to these crops. That he has done extensive work in the field of orchard rejuvenation and in the field of virus free lemon plantings; that in addition to his present employment, he is a nursery and citrus

Exhibit 3

consultant in California and Arizona; that he is well acquainted with the lands and citrus development in the Yuma Mesa Irrigation and Drainage District and the development of citrus acreages throughout California; that in his opinion, the water and cultural practices employed on the Yuma-Mesa are consistent with good cultural and water practices employed throughout the citrus industry; that the setting of the lemon crop upon the Yuma-Mesa normally takes place through the months of April, May and June of each year for the crop harvested in the following Fall and early Winter months.

That by reason of an abnormally cool Spring, the setting period for citrus on the Yuma-Mesa has been delayed and the fruit will continue throughout its setting period through the 1st of August, 1964; that during the setting period, the citrus crop is particularly vulnerable to a lack of moisture as an interference with the flow of moisture to the tree roots would result in a shelling or dropping of fruit during the set period and a consequent loss of production of the crop. That the immediate effect upon citrus trees from lack of moisture would be (a) the dropping of fruit during the setting period (b) the burning of fruit and consequent drying up of the juice within the fruit making such crop worthless in the fresh fruit market and (c) if the trees go into a state of wilt, damage can be either a retarding of growth or permanent impairment and death of the producing part of the tree.

That the greater bulk of lands within the Yuma Mesa Irrigation and Drainage District contain young trees and are thus more vulnerable to lack



of water retention, and the exposure of the area to extreme Summer temperatures ranging from an average of 91.6° in July, August and September, to temperatures in excess of 120° Fahrenheit; that by reason of the nature of the soil and the extremes in dry Summer heat, effective cultural practices depend upon the frequency of irrigations to the groves; that a 10% cutback in water availability would increase the frequency of irrigations required to properly mature the fruit; that a delay in proper water application for a period of twenty-four (24) hours under extremes of weather can destroy the fruit crop and permanently impair the growth and production capacity of the citrus fruit trees; that a 10% cutback in water availability throughout the remaining seven (7) months of 1964 could result in a substantial reduction of the citrus crops produced and permanently impair the orchards on the Yuma-Mesa.

That in his opinion, there is no wastage water at the farm level and since the Irrigation District operates a closed lined system, there is no wastage of water incurred in the deliveries of water to the farms; that, therefore, any reduction in water deliveries to the District would result in a reduction of waters applied to the trees with the consequent and potential damages above described.

DATE this 25 day of June, 1964.

/s/  
H. W. ORMSBY

SUBSCRIBED AND SWORN to before me this 25 day of June, 1964, by H. W. ORMSBY.

/s/ Alice Magana  
Notary Public

My commission expires:  
June 25, 1967

Civil Action No. 1551-64

STATE OF ARIZONA )  
 ) ss  
County of Yuma )

That he came to Yuma in 1948 and is the owner of 120 acres of land on the Yuma-Mesa, which he received under the Veterans Homestead Act; that he is primarily engaged in the farming of alfalfa, peanuts and cotton upon his homestead; that he was born on a farm and has been engaged in farming all of his life, excepting for his period of service in the United States Military during World War II; that a ten (10%) percent cutback in water usage upon his farm would result in a decrease of net profits of approximately twenty-five (25%) percent; that farming costs would be substantially the same, but yields would be cut down; that not only would there be a cutback in his farm income in 1964, but financing for subsequent years would be impaired, as crop financing in the Yuma Area, and other areas, is based upon production records and income records of the past year. That although farming on the Yuma-Mesa requires additional water by reason of the sandy soils, there is no wastage of water and all farm applications of water are in accordance with established and customary farm practices and techniques recognized everywhere.

[ 57 ]

DATED this 25 day of June, 1964.

/s/  
FAGAN TILLMAN

SUBSCRIBED AND SWORN to before me this 25 day of June,  
1964, by FAGAN TILLMAN.

/s/ Alice Magana  
Notary Public

My Commission Expires:  
June 25, 1967

Civil Action No. 1551-64

STATE OF ARIZONA )  
 ) ss  
County of Yuma )

That he is a homesteader presently residing upon the homestead which he received from the United States Government; that he has been a farmer all of his adult life and presently owns 320 acres of land, of which 290 is planted to citrus; that approximately two-thirds of his existing citrus orchards are young trees and non-producing citrus; that exclusive of land costs, the costs of bringing a citrus orchard to producing maturity in five (5) years is Fifteen Hundred (\$1,500.00) Dollars per acre; that he, like other homesteaders and small farmers on the Yuma-Mesa, must look to his farm to repay these substantial capital costs; that a cutback of 10% in water availability on the Yuma Mesa would jeopardize the young citrus groves which he owns and would seriously impair and put in jeopardy the many years of hard work he has done to bring his farm to producing maturity for the security of himself and his family.

/s/  
**JOHN R. SCARBROUGH**

/s/ Alice Magana  
Notary Public

[ 59 ]

Civil Action No. 1551-64

STATE OF ARIZONA )  
 ) ss  
County of Yuma )

That he is a resident of Yuma, Arizona, and has been for the past five (5) years; that he has had thirty years experience in all phases of the citrus business and at the present time he is the manager of Mutual Citrus Products which markets its juice products under the brand name of MCP, found in all grocery stores and markets throughout the country; that in his experience, the citrus industry on the Yuma-Mesa is unique in that the soils upon which citrus is grown is light sandy loam and the area is subject to extreme summer temperatures; that the light sandy soils have very little, if any, water holding capacities and therefore require frequent irrigations in order to produce a marketable crop; that many of the young groves on the Yuma-Mesa are adjacent to irrigation laterals which are already fully extended in order to meet existing watering schedules; that a cutback of ten percent of water available for farm use would require more frequent irrigations and thereby jeopardize the existing groves, some of which of necessity, and by the limitations of the irrigation system, would be out of water; that under the extremes of weather conditions found in the

[ 60 ]

Yuma-Mesa permanent damage can be done to citrus trees within twenty-four (24) to forty-eight (48) hours where there is a lack of water; that in his opinion, a cut of 10% in water deliveries in the next seven (7) months on the Yuma-Mesa will result in a substantial reduction in fruit crop causing economic loss and hardship and permanent damage to the existing orchards.

DATED this 25 day of June, 1964.

/s/  
CLAUDE C. BARNETT

SUBSCRIBED AND SWORN to before me this 25 day of June, 1964, by CLAUDE C. BARNETT.

/s/ Alice Magana  
Notary Public

My commission expires:  
June 25, 1967



Civil Action No. 1551-64

STATE OF ARIZONA )  
 ) ss  
County of Yuma )

That he is the owner of 50 acres of land upon the Yuma-Mesa and a veteran receiving his farm in 1952 under the Homestead Act; that at the present time he has approximately 40 acres planted to citrus; that in order to support the heavy capital costs involved in his citrus orchards, he supports himself and his family by other jobs in addition to farming; that the 40 acres of citrus owned by him are young trees and on a lateral which already is over crowded with other users; that a ten percent (10%) cutback in water usage would put extreme pressure on this lateral and would result in extending irrigation schedules, thereby jeopardizing the growth of his orchards; that his whole life savings are tied up in his farm and water shortage, resulting in the destruction of his trees, would wipe him out and cause the forfeiture of his farm.

/s/  
L. A. LEMKE

/s/ Alice Magana  
Notary Public

Exhibit 7

Civil Action No. 1551-64

[illegible]

That he came to Yuma in 1948 and received a homestead of 140 acres under the Veterans Homestead Act; that he has been a farmer all of his life.

That he has 80 acres of citrus and supports the heavy capital costs involved in such investment by farming other row crops and acting as a custom operator for others.

Exhibit 8

DATED this 26th day of June, 1964.

/s/  
ELLIOTT WAITS

SUBSCRIBED AND SWORN to before me this 26th day of June,  
1964 by Elliott Waits.

/s/ Mildred L. Fulmer  
Notary Public

My commission expires:  
[illegible]

Civil Action No. 1551-64

STATE OF ARIZONA )  
                              ) ss  
County of Yuma     )

That he has been a resident of Yuma County, Arizona, since 1948; that he is presently a member of the Board of Directors of the Yuma Mesa Irrigation and Drainage District.

That he has been a farmer all of his life and feels that there is no wastage of water within the District either at the farm level or within the distribution system.

/s/  
ELDON PAULSON

/s/ [illegible]  
Notary Public

[ 65 ]

Civil Action No. 1551-64

STATE OF ARIZONA )  
 ) ss  
County of Yuma )

That he has lived upon the Yuma-Mesa for approximately ten years and is the manager of the Yuma Lemon Groves, an organization which operates approximately 750 acres of citrus on the Yuma-Mesa; that he has had approximately 40 years experience in the citrus business, 30 years of which have been in California and the past ten years in Arizona; that the Yuma citrus area is unique as compared to other citrus areas in the United States by reason of the extremely light, sandy soil and the extremes in Summer temperatures; that the light, sandy soils require more frequent irrigation schedules due to the lack of water holding capacities of the soil; that the present 1964-65 fruit crop has been delayed due to the subnormal temperatures in the Spring of this year and the fruit crop has not set and will not be fully set until approximately the 1st of August, this year; that during the setting of the fruit crop, the trees are extremely vulnerable to lack of moisture and lack of moisture for short periods of time results in the shelling of the fruit, or a fruit drop; that this correspondingly reduces the yield and result in a loss year for the industry; that in his opinion, the water practices on the Yuma-Mesa are consistent with good citrus cultural

[ 66 ]

practices employed throughout the industry and there is no wastage of water on the Yuma-Mesa; that a 10% cutback in water usage would require an increased frequency of irrigation schedules throughout the Yuma-Mesa; that increase in irrigation schedules on the Yuma-Mesa would unduly strain the present irrigation facilities resulting in necessity in delays to the citrus farmers on these laterals; that a 10% cutback, therefore, in water usage could result in a loss of the 1964-65 fruit crop and permanent damage to the trees themselves; that once the trees go into a state of wilt, their growth is retarded, or permanently impaired; that the total cost in damages is difficult to ascertain, but without question great harm would result to this multi-million dollar industry in Yuma.

DATED this 25th day of June, 1964.

/s/  
WILLARD K. MOSS

SUBSCRIBED AND SWORN to before me this 25 day of June, 1964, by WILLARD K. MOSS.

/s/ Alice Magana  
Notary Public

My commission expires:  
June 25, 1967



Civil Action No. 1551-64

STATE OF ARIZONA )  
 ) ss  
County of Yuma )

That he is a landowner and resident of Yuma County, Arizona; that he is presently employed by Curtis, Woodman & Roach of Yuma, Arizona, as field supervisor in charge of all field operations and cultural practices for that organization; that Curtis, Woodman & Roach are engaged in citrus farming, farm management and citrus packing in Arizona and are the largest citrus farming organization in California and Arizona; that he holds a Bachelor of Science degree in citrus and fruit products in California State Polytech, San Luis Obispo, California; that as part of his job as field supervisor for the firm of Curtis, Woodman & Roach, he oversees the cultural practices for some 6,500 acres of citrus lands on the Yuma-Mesa located within the boundaries of the Yuma Mesa Irrigation and Drainage District.

Exhibit 11

character of the soil and the extremes in temperature, water plays a vital role in the growing [sic] and marketing of citrus products.

The the fruit crops in 1964-65 has been retarded in the setting of fruit by reason of a cold spring which has delayed growth; that by reason of the weather, the setting period will continue until August 1, 1964; during the period when the fruit is setting, the crop is especially vulnerable to extremes in temperatures and lack of moisture; that unless adequate amounts of water are available for the crop, the young fruit will drop from the trees and thus constitute a total loss of this year's crop.

That a cutback in moisture control under the extremes in temperature conditions for a period of twenty-four (24) hours can result in a total loss of the fruit crop.

That the absorption rate of citrus trees is a constant factor, commensurate with the age of the tree; that to have a cutback in water application will require an increase in the number of irrigations to be applied; that the lateral system of the Yuma Mesa Irrigation and Drainage District is already hard-pressed to meet existing irrigation schedules; that a cutback of 10% in water use on the Yuma-Mesa would result in increased pressure on the lateral system and, in the event of the occurrence [sic] of the normal extremes in weather during the summer months of 1964, would result in a loss of the fruit crop and serious impairment to the growth schedule of existing citrus orchards; that a lack of water in the fall months and particularly November and December would equally jeopardize the

citrus industry of the Yuma-Mesa; that in accordance with past weather records, the Yuma-Mesa has had frost in the early part of November and December; and in accordance with established cultural practices, the best protection against frost damages are trees who have had an adequate supply of water and fertility, so that their respiratory systems are functioning properly; that as irrigation schedules are stretched, the vulnerability to frost damage correspondingly increases; that, therefore, a cut of 10% in the water supply of the Yuma-Mesa creates a hazard and gamble to a multi-million dollar enterprise;

That your affiant is generally acquainted with irrigation practices on the Yuma Mesa Irrigation and Drainage District and in his opinion believes that the cultural practices employed and water conservation methods are in accordance with the highest standards of the industry.

DATED this 25 day of June, 1964.

/s/  
D. V. SMITH

SUBSCRIBED AND SWORN to before me this 25th day of June, 1964, by D. V. Smith.

/s/ [illegible]  
Notary Public

My commission expires:  
[illegible]

Civil Action No. 1551-64

STATE OF ARIZONA )  
 ) ss  
County of Yuma )

That he is a resident of Yuma County, Arizona, residing upon the Yuma-Mesa; that he came to Yuma County as a homesteader and presently owns approximately 202 acres of land; that in addition to his own acreage, he rents, leases and manages additional acreages amounting to a total of 1,500 acres; that he is a third generation farmer, holding a degree of Bachelor of Science in Animal Husbandry and a minor in Horticulture at Cal-Poly, San Luis Obispo, California; that he is a past president of the Farm Bureau, the Secretary and Director of the Farm Bureau and a Director of the Yuma Livestock Association; that he makes his living solely by reason of his farming operations; that the primary crops grown by him are peanuts and cotton; that the bloom period for peanuts is approximately forty-five days, beginning on or about the 13th day of June through the 1st day of August of each year; that during the bloom period, it is imperative and essential that the ground be continuously moistened; that if the peanut crop is deprived of water during the bloom period, there will be no peanut crop.

[ 71 ]

That in addition to peanuts, he also grows cotton; that the water schedule for both peanuts and cotton is approximately five days; that it is essential to the healthy growth of the plants that these schedules be maintained; that the growing cost of cotton and peanuts would be the same regardless of the cut in water; that, therefore, the 10% cutback in water usage would result in a substantially larger cut in yields and drastic reduction in income; that all of his row crops, peanuts and cotton, are financed through the Valley National Bank in Yuma, Arizona, and the payment schedules must be met; that he, like other small farmers and homesteaders on the Yuma-Mesa, looks exclusively to his farm to repay the capital costs of the farm, both to the United States and to the lending institutions; that a cutback in water would produce a serious cutback in income, thereby jeopardizing the many years of hard work that have gone into making this farm; that he was raised in the citrus areas of California and is acquainted with watering practices and cultural practices, both in California and on the Yuma-Mesa; that in his opinion, there is no wastage of water by the farms on the Yuma-Mesa.

DATED this 30th day of June, 1964.

/s/  
GERALD L. DIDIER

SUBSCRIBED AND SWORN to before me this 30th day of June, 1964, by GERALD L. DIDIER.

/s/ Esther D. Chrismore  
Notary Public

My commission expires:  
April 24, 1965

## COLORADO RIVER COMPACT

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the Act of Congress of the United States of America approved August 19, 1921 (42 Statutes at Large, page 171), and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners:

W. S. Norviel for the State of Arizona  
W. F. McClure for the State of California  
Delph E. Carpenter for the State of Colorado  
J. G. Scrugham for the State of Nevada  
Stephen B. Davis, Jr., for the State of New Mexico  
R. E. Caldwell for the State of Utah  
Frank C. Emerson for the State of Wyoming

who, after negotiations participated in by Herbert Hoover appointed by The President as the representative of the United States of America, have agreed upon the following articles:

### ARTICLE I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

### ARTICLE II

As used in this compact--

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.



(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah, and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

### ARTICLE III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to The President of the United States of America, and it shall be the duty of the Governors of the signatory States and of The President of the United

States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and the Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

#### ARTICLE IV

(a) Inasmuch as the Colorado River has creased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water.

#### ARTICLE V

The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall cooperate, ex-officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption, and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

#### ARTICLE VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the State affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

#### ARTICLE VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

#### ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against

appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

#### ARTICLE IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

#### ARTICLE X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

#### ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this twenty-fourth day  
of November, A.D. One Thousand Nine Hundred and Twenty-two.

(Signed) W. S. Norviel.  
(Signed) W. F. McClure.  
(Signed) Delph E. Carpenter.  
(Signed) J. G. Scrugham.  
(Signed) Stephen B. Davis, Jr.  
(Signed) R. E. Caldwell.  
(Signed) Frank C. Emerson.

Approved:

(Signed) Herbert Hoover.



(HEADING OMITTED)

Civil Action No. 1551-64

AFFIDAVIT

Washington,                    )  
                                  ) ss.  
District of Columbia    )

FLOYD E. DOMINY, being first duly sworn, deposes and says:

I am the Commissioner of Reclamation and have served in such capacity since May of 1959.

I have served the United States Government for more than 30 years in the fields of land and water resource conservation and development.

I was born on a farm near Hastings, Nebraska, on December 24, 1909, and am a graduate of the University of Wyoming, with a B. S. in agricultural economics and an A. B. in liberal arts. My formal education was continued with post-graduate work at the University of Wyoming and Columbia University's School of International Administration.

My professional career began in 1933 as a vocational agricultural teacher in the Hillsdale, Wyoming, High School. I also served as county agricultural agent for Campbell County, Wyoming, and in 1938, I moved to the Nation's Capital to become field agent for the western division of the Agricultural Adjustment Administration.

My experience in the international natural resource area dates back to wartime service as Assistant Director of the Food Supply Division,

Exhibit I

Office of the Coordinator of Inter-American Affairs, dealing with war food production in South and Central America. I also served in the United States Naval Reserve as the Military Government staff officer involved with agricultural rehabilitation of the Central Pacific Islands.

After completing my war service, I joined the Bureau of Reclamation in April 1946 as a land settlement specialist in the Irrigation Division, and became Chief of the Allocations and Repayment Branch of the Bureau.

I was appointed Assistant Chief of the Division of Irrigation in 1950 and Division Chief in 1953. I was selected Assistant Commissioner in 1957 and named Associate Commissioner in 1958. I was named Commissioner in 1959 by President Eisenhower and was reappointed in January 1961 by President Kennedy.

I am also responsible by formal delegation from the Secretary of Interior for carrying out his duties and functions under the Boulder Canyon Project Act (43 U.S.C. 617, et seq.) As part of such duties and functions, I oversee administration of a network of dams, reservoirs, and other facilities which control the Colorado River and its tributaries, including the portion of the mainstream between Lake Mead and the Mexican border. Among the Colorado River system facilities operated under my supervision are the Glen Canyon, Flaming Gorge and Navajo Dams of the Colorado River Storage Project in the Upper Colorado River Basin, and the Hoover, Davis, Parker and Imperial Dams in the Lower Basin of the Colorado River, all as shown on the attached location map

(Exhibit 1). All storage and diversion structures on the Colorado River are federally owned and are operated under the authority delegated to me by the Secretary of the Interior with the exception of the Palo Verde Diversion Dam (federally owned but operated by the Palo Verde Irrigation District) and Morales Dam, which is the diversion structure for Mexican Treaty water.

Through this network of facilities it has been possible to regulate and put to constructive use a river which formerly ran unchecked, with periodic destructive floods. These works permit the maximum beneficial use of river waters for municipal, agricultural and other uses, as well as river regulation, improvement of navigation and flood control, and the generation of power - all as provided by the controlling statutes. In addition, there is an international obligation to deliver at least 1,500,000 acre feet of Colorado River water annually to Mexico under the Treaty of 1944.

Thus, the existing demands and commitments for Colorado River water, particularly that available to the lower basin, are already large. They require complex and coordinated operation and scheduling in order that the water may effectively serve the multiple purposes to which it must be put.

These requirements of careful, close management have been particularly intensified during the last two years of sub-normal runoff along the Colorado River. Although the 40-year average April through July runoff of the Colorado, as measured near Grand Canyon, Arizona,

has averaged 8.3 million acre feet a year, the runoff during the same period in calendar year 1963 totalled only 3.0 million acre feet and for April through July 1964 the applicable figure is estimated to be approximately 5.1 million acre feet. The April through July runoff represents about two-thirds of the annual runoff. This runoff is the source of practically all water that becomes available for release for use from the Lower Colorado River reservoirs, including Lake Mead (Hoover Dam).

The need to accommodate all authorized uses of water in the order of legal priority accorded such uses multiplies the problems of river management in the years of unusually short supply.

At my direction, in prior years of more plentiful runoff, attention of the large water using organizations which have contracts with the Secretary, including the Yuma Mesa Irrigation and Drainage District, has been called to undesirable and wasteful practices in the use of water. However, in those years the demands upon the river water and the availability of water were such that gradual programs of correction rather than immediate action appeared permissible. Typical efforts which we have made along these lines are described below.

Each year the Yuma Mesa Irrigation and Drainage District publishes regulations (an example of such regulations for 1963 is attached as Exhibit 2) which establishes a charge for a basic quantity of irrigation water and the additional charge payable for extra water which may be ordered by individual water users. Historically, the District has charged less per acre

foot (\$1.25) for extra water than for the basic quantity (\$1.30). Because of the concern of the Bureau of Reclamation that placing of a decreased charge on the use of extra water encourages the wasteful use of water, the Regional Director, Bureau of Reclamation, Boulder City, Nevada, has for a number of years protested this to the District and asked that the charge for extra water be increased. The affidavit of Mr. Theodore Moser in the present case states that on a number of instances the District has been requested without avail to increase the charge for extra water in the interest of preventing waste.

The Yuma Mesa Irrigation and Drainage District has also engaged in practices which have led to the substantial waste of water. As set out in the affidavit of Theodore H. Moser, filed in this suit, the District ordered, but rejected 58,467 acre feet of water in 1962, 47,149 acre feet in 1963, and 27,111 acre feet in the first five months of 1964. As the Moser affidavit points out, the great majority (as high as 90 percent) of water that is ordered and then rejected, is "wasted" in the sense that it constitutes over-deliveries to Mexico. This waste for the most part could be avoided by more efficient practices.

The increasing water needs and the successive deficient water years of 1962 and 1963 led the Regional Director in 1963 into further and intensive efforts to persuade the water users on the Lower Colorado River, including the Yuma Mesa Irrigation and Drainage District, to practice frugality in their orders for and uses of water. Such was the subject of a letter dated

August 14, 1963. A copy of this letter designated Exhibit 3 is attached hereto. (Former Exhibit 4 has been deleted.)

However, the severe under-supply of the past two years has produced a situation where it is no longer possible to tolerate wasteful practices in the use of water by those having contracts for Colorado River water. Analysis of current water practices of the major contracting organizations indicates about 15 to 18 per cent or more of the water being contracted for may be being wasted by improvident or inefficient water practices. For example, the water ordered on the master schedule of the Yuma Mesa Irrigation and Drainage District, as set forth above, but rejected by the District amounted respectively to 18.0, 15.2 and 23.6% of the master schedule for the years 1962, 1963 and the first five months of 1964.

Accordingly, and in the face of a second successive poor water year, I have been compelled to conclude that careful management of the River requires the use of all reasonable means to reduce wasteful and inefficient use of water. Indeed, the contract with the District, as well as the contracts with most of the water users along the River, expressly limit the contractor to water "reasonably required and beneficially used," (page 3, of Exhibit 8, below). Accordingly, I recommended and the Secretary of the Interior directed, in discharge of his duties to operate the river regulatory works in a unitary and efficient manner in the public interest, that there be a 10 per cent reduction for the last seven months of

calendar year 1964 in the water actually diverted to those with contracts for Colorado River water. Initially, this proposed cutback took the form of a request for voluntary reduction. Such was the subject of the letter dated May 5, 1964, from the Regional Director, Bureau of Reclamation to the Yuma Mesa Irrigation and Drainage District (Exhibit 5). The District did not reply to this letter.

On May 16, 1964, at a public meeting in Las Vegas, Nevada, the Secretary of the Interior publicly announced his order making mandatory a 10 per cent cut in gross water deliveries. This order was communicated to all users of water on the Lower Colorado, including the District, by letter dated May 19, 1964, from the Regional Director (Exhibit 6). The District by letter dated May 28, 1964, (Exhibit 7) objected to the 10 per cent cut, and submitted, under protest, a proposed water schedule.

The Secretary's order did not ask that each week's diversion be uniformly reduced by 10 per cent. It simply required that the total diversion for the remaining seven-month period, beginning June 1, 1964, not exceed a total quantity which would be 10 per cent less than the quantity previously scheduled for diversion during that period. Nor did his order require an absolute 10 per cent reduction since hardship adjustments were authorized.

Although the water users almost uniformly protested the order and in so doing particularly expressed their concern regarding the preservation of their legal water rights, the other major water contractors



(accounting for 90 percent of the gross diversions along the Lower Colorado) also stated their willingness to cooperate as far as they possibly could in the conservation of water and in so doing to comply with the terms of the order. In addition to Yuma Mesa Irrigation and Drainage District, one other water contracting agency in the Yuma area has filed suit against the Secretary's order, as has a California irrigation district purporting to represent the individual non-Indian water users in the Reservation Division of the Yuma Project. These last two entities are the Yuma County Water Users' Association and the Bard Irrigation District respectively.

The Yuma Mesa Irrigation and Drainage District has been in the past, and is at the present time, diverting and receiving water at a rate in excess of the maximum rate specified in its repayment contract with the United States dated May 26, 1956 (Exhibit 8). This contract specifies a maximum rate of diversion at Imperial Dam of 520 c. f. s. In the past, the District has at times been allowed to utilize part of the unused capacity of the Gila Gravity Main Canal with the consent of the other entities along the canal. This year, including the period since June 1, 1964, the District has been allowed to divert 520 c. f. s. at the Yuma Mesa Pumping Plant, some twenty miles downstream from Imperial Dam without being charged with losses in the canal. These losses amount to approximately 26 c. f. s. for the water diverted for the Yuma Mesa District. Therefore, the District has in the past, and is still, receiving water in excess of its contract

limitations and the amount of water diverted by the District has not been cut a single acre foot below the contract amount as a result of the 10 per cent cutback. Furthermore, the schedule submitted by the District accompanying its letter of May 28, 1964, (Exhibit 7) proposes diversions at the 520 c.f.s. rate for the entire months of June, July, and August. This schedule has tentatively been accepted pending receipt of a revised schedule specifying slightly different quantities. In the meantime the District is currently ordering water at the rate specified in this schedule of diversions and water is being released from Parker Dam to meet those orders. In addition, the District from time to time since June 1, 1964, has been allowed to take water in excess of its order at such times as extra water is available at Imperial Dam.

The practical effect of the situation just described is that during the three hot summer months of June, July and August, when the District has the heaviest water use and the most critical need for water, by virtue of the extreme heat and the requirements of its citrus planting and other agriculture, the District will receive more than the full maximum rate of flow to which it is entitled under its contract. Under these circumstances, it is difficult to see how the District has a substantial basis for complaint.

If the District chooses to continue to take water during the summer months at the rate of 520 c.f.s. at the Yuma Pumping Plant, which is above the maximum contract rate to which it is entitled, it will receive

94,889 acre feet during June, July and August. Consequently, the District will have available to it 68,391 acre feet for the remaining and less critical - four months of the year. The District took only 67,900 acre feet during the last four months of 1963. Even if this figures is adjusted to add an additional 6,729 acre feet which the District states that it would have diverted except for abnormally heavy rains in September of 1963, the reduction is relatively minor.

It is particularly important to emphasize, as is spelled out in detail in the Moser affidavit in this case, that if the District were strictly held to the terms of its contract, and were permitted only the maximum rate of flow provided by its contract, the District's diversions would be reduced by slightly more than the 10 per cent cutback ordered by the Secretary. Furthermore, if the District were thus literally held to its contract, much of the reduction would come during the critical, hot summer months, although under the Secretary's order, the District is being permitted to take more than its contract rate of flow during June, July and August.

Specifically, the District will divert 19,035 acre feet more than its contract entitles it to, if the 1963 pattern with respect to rates of flow is followed. This is a reduction of 893 acre feet in excess of that which would be required under the Secretary's 10 per cent cutback order - and a large part of this reduction would occur in the three summer months.

In brief, the Secretary's 10 per cent reduction order is more considerate of crop needs than would be the case if we were to insist on

a strict compliance with the contract terms.

Finally, there is no reasonable likelihood of injury to any individual, as all contract water users along the lower Colorado River are being informed by the Regional Director (by the letter attached as Exhibit 9) that no individual farmer will be permitted to suffer injury as a result of the Secretary's order, and that, upon application, water will be made available to any hardship case.

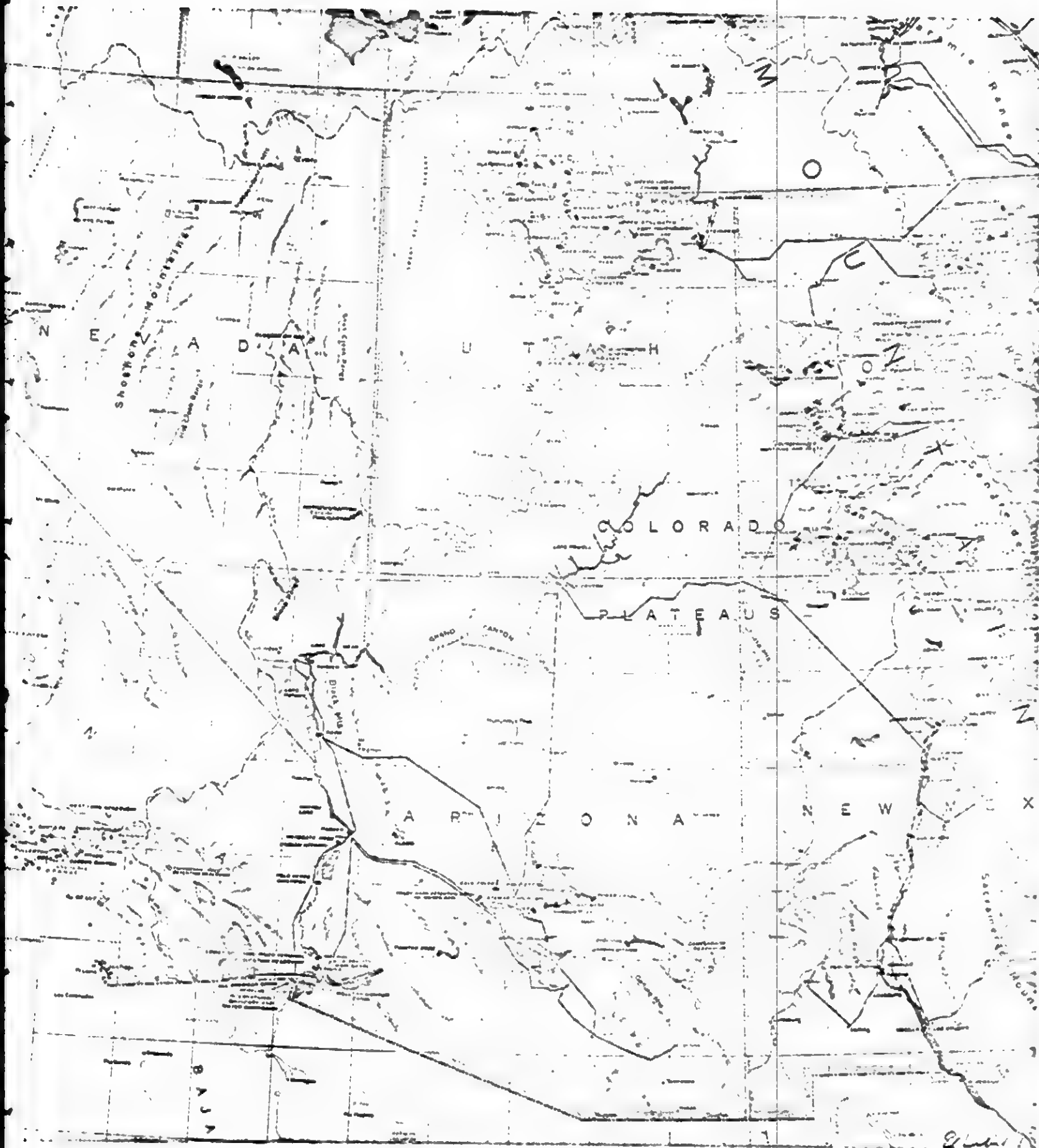
It is my considered judgment that the order directing a 10 per cent reduction is required by the over-all needs of the system of river facilities entrusted to the Secretary's management by the Congress. It is my further conclusion that not only will this necessary conservation measure fail to injure any individual water user, but it will benefit all concerned water users both individually and as a group in that it will enable water that would otherwise be wasted to be retained in storage for the integrated management of the Colorado River in the public interest.

/s/ Floyd E. Dominy

Subscribed and sworn to before me this 15th day of July, 1964.

My commission expires: May 14, 1967.

/s/ Hugo Duhn  
Notary Public



## WATER REGULATIONS FOR THE YEAR 1963

*Exhibit 2*  
BE IT RESOLVED: That the following rules and regulations shall govern the distribution and the use of water for the calendar year 1963.

### I. WATER SERVICE

#### (A) Applications for Water

Applications for water shall be made at the Yuma Mesa Irrigation and Drainage District office, Fourth Avenue and County 14 $\frac{1}{2}$  Street, on the forms prescribed.

### II. WATER CHARGES

#### (A) Minimum Water Charge

For all lands classified under the United States-District contract as irrigable, as distinguished from acreage actually irrigated, and excepting unentered public lands, a uniform water assessment has been levied for the calendar year 1963 of \$11.70 per irrigable acre. This assessment covers the delivery of not to exceed nine (9) acre feet of water per irrigable acre, and is payable whether or not the water is used.

#### (B) Additional Water

Additional water over the above minimum of nine (9) acre feet per acre may be purchased at the rate of \$1.25 per acre foot of water.

### III. PAYMENT

#### (A) Minimum Water Assessment

The minimum nine (9) acre foot water assessment has been included in the Operation and Maintenance charge levied and assessed as a tax levy in accordance with state law governing Irrigation Districts. Pursuant to such state law, the first half of the Irrigation District tax levied for the year 1963 is due and delinquent on 5 November 1962 and the last half is due and delinquent on 6 May 1963. Payment of all District tax levies shall be made at the office of the Yuma County Treasurer, Court House Building, Yuma, Arizona.

#### (B) Refusal of Water Delivery

Pursuant to the terms of the United States-District contract and the laws of the State of Arizona governing Irrigation Districts, no water shall be delivered to any lands while any Irrigation District tax levied upon such lands is delinquent.



(C) Additional Water

Additional water over and above nine (9) acre feet per irrigable acre may be purchased at the Irrigation District office located on Fourth Avenue at County 14½ Street during office hours (8:00 A.M. to 5:00 P.M.) Payment for additional water shall be made in full before the water is delivered. The minimum order permissible shall be one (1) acre foot per day.

IV. COMBINATIONS OF WATER ACCOUNTS

(A) Definition

For the purpose of these regulations, the following words shall have the meaning herein prescribed for them:

a. Developed Lands: All lands classified under the repayment contract as irrigable, for which a water service contract existed prior to 1 January 1959.

b. Undeveloped Lands: All lands classified under the repayment contract as irrigable, for which no water service contract existed on or before 1 January 1959, and which had not been brushed and levelled prior to said date.

c. Ownership: Means the record owner, holder of purchase contract, entryman, or duly authorized agent of the foregoing, or lessee under a leasehold interest.

(B) Qualifications on Combining Water Accounts

Developed and undeveloped lands may be combined under a single water account if the lands are held under common ownership, subject to the following restrictions:

a. Combination of water accounts can not be made after 15 March 1963 excepting lands acquired after that date.

V. UNPAID WATER CHARGES A LIEN UPON THE LAND

Pursuant to Section 45-1588, Arizona Revised Statutes, all charges for water service shall become a lien upon the land served until paid in full, regardless of whether such water service was ordered by the owner, thereof or his lessee, tenant or purchaser under a salescontract, and water service shall not be provided any lands until all past due water charges have been paid.



## VI. OBSERVANCE OF RULES AND REGULATIONS

All notices, orders, rules and regulations now or hereafter established by the District affecting water service hereunder shall be strictly observed by the applicant.

Any infraction of these rules shall be referred to the Board of Directors for appropriate disciplinary action. Any disputes arising over the interpretation of these rules shall be referred to the Board of Directors, whose decision in such matters shall be final.

## VII. AMENDMENTS TO REGULATIONS

The Board of Directors expressly reserves the right to amend any of the rules or regulations herein promulgated.

### REGULATIONS FOR DELIVERY OF IRRIGATION WATER

#### I. WATER ORDERS

(A) All orders for water shall be placed with the water office through telephone number Sunset 2-4351, or other means, by not later than Friday noon for the week beginning 12:01 A.M. the following Sunday. All water orders placed from 9:00 A.M. Monday to 12:00 midnight Wednesday will be treated the same. No water order will be refused after Wednesday, but all water will be scheduled by the water office.

(B) The following information is required for each order:

1. Name
2. Phone No.
3. Serial No.
4. Canal System
5. Size of head and hours
6. Preferred date
7. No. of acres to be irrigated.

(C) Water orders when received by the water dispatcher are considered as firm contracts except that any water user may cancel his order for water up to within six hours of the time he is scheduled to take delivery. If the order is cancelled or delivery refused, or the water user is not available, any time during the six hour period prior to the time water is scheduled for delivery, the account will be charged for ten acre feet of water and the turn in rotation will be lost until rescheduling can be accomplished without loss to others in the rotation cycle; except that

if some other water user in his rotation cycle, preferably the next scheduled in turn, agrees to accept the exchange of water and the water dispatcher can make such exchange within the physical limitations of the system, the water user making the initial order will be cancelled out and the one receiving the water will be charged in accordance with the actual water delivered, but in no case less than five acre feet. The responsibility for these arrangements is that of the water user cancelling his order. Refusal to accept delivery of water within 24 hours prior to date of order constitutes cancellation.

## II. WATER SCHEDULES AND NOTICE TO WATER USER

Upon receipt of all water orders by midnight of each Wednesday for the following week, the schedules of deliveries and order of rotation will be established by the water office and be made available to each water user upon request. This will be followed by notification two (2) hours before time of delivery, giving the exact time the water will be at the headgate.

## III. DETERMINATION OF CHARGES

(A) The official turn-on time will be the exact time that the turnout gate is opened by the ditchrider, for the purpose of water charges.

(B) The water user will notify the water dispatcher at least two (2) hours before the exact time of cut-off desired and the time specified in this notification becomes the official cut-off time for purpose of water charges. Should a water user be requested to keep the run for any additional time because no ditchrider is available to make the change, no charge will be made for additional time of run.

(C) The minimum charge for delivery of water will be one (1) acre foot.

## IV. WATER MEASUREMENT

(A) Water flow measurement will be recorded at the turn-on time, the cut-off time, and, so far as practicable, twice each 12-hour shift. These records will be received and recorded by the water dispatcher and become the official record and the basis for all water charges. Actual elapsed time and the minimum of all readings for each 12-hour shift will be used in the determination of quantity delivered.

(B) All changes in settings of turnout gates for regulations including turn-on and cut-off will be made by the ditchriders.

## V. MAXIMUM AND MINIMUM DELIVERY FOR UNINTERRUPTED RUN

(A) For the benefit of more efficient operation, the maximum delivery

will be based on eight (8) inches of water per acre every ten (10) days. In the event that the hours ordered are not sufficient, longer time will be granted to the extent that maximum water used does not exceed eight (8) inches every ten (10) days to any individual farm unit as designated originally by the Bureau of Reclamation.

(3) When any irrigation exceeding twelve (12) hours is expected to be completed in less time than that ordered, the water user will advise the water dispatcher approximately six (6) hours before the expected completion of the irrigation and again two (2) hours before the time of cut-off desired, as set forth in paragraph 3 (b).

#### VI. DELINQUENT ACCOUNTS

Paragraph III (c) of the Rates, Rules and Regulations governing Water Service, as established for the calendar year 1959 by the Yuma Mesa Irrigation and Drainage District stipulates "payment for additional water shall be made in full before the water is delivered," therefore, excess water will be scheduled only in the amount that is credited to the water user's account. No order will be accepted if an account is in the "Red"

3-100

AUG 14 1963

Mr. Robert F. Carter, General Manager  
Imperial Irrigation District  
502 State Street  
La Brea, California

Dear Mr. Carter:

Precipitation and runoff from the Colorado River for the period April through July of 1963 have established a new "low" to the "low" record for the river. Discounting whatever water may have gone into bank or ground storage in the newly completed upstream reservoirs, only 3.007 million acre-feet of total flow has been measured. This compares with 3.244 million acre-feet in 1954, and 2.047 million acre-feet in 1957, the lowest year of record.

Because of this low runoff, coming coincidentally with the need for filling upstream reservoirs, I am asking that your District, and all others in the lower basin having contracts with the Secretary of the Interior for delivery of Colorado River water, voluntarily re-examine and re-evaluate water requirements for the remainder of this calendar year, with the objective of reducing where at all possible the amounts called for on the weekly water schedule. Similarly, I am asking that in the preparation of schedules of water requirements for calendar year 1964 you exercise the utmost frugality in proposed water use.

I am not suggesting at this time that an emergency exists, or that a serious situation requiring that the United States reduce deliveries to contractors should be anticipated for 1964. Nevertheless, it is clear that unless at least normal flow into Lake Mead is experienced in 1964, a very grave water supply problem is posed. Whether that problem is such as to require formal declaration of a shortage, and subsequent reduction of deliveries by the United States, will await evaluation of the 1964 probable runoff.

Exhibit 3

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3-100

AUG 14 1963

Mr. Robert F. Carter, General Manager  
Imperial Irrigation District  
502 State Street  
San Carlos, California

Dear Mr. Carter:

Precipitation and runoff from the Colorado River for the period April through July of 1963 have established a new "low" to the "lowest" record for the river. Discounting whatever water may have gone into bank or ground storage in the newly completed upstream reservoirs, only 3.507 million acre-feet of total flow has been measured. This compares with 5.644 million acre-feet in 1954, and 2.247 million acre-feet in 1958, the lowest year of record.

In view of this low runoff, coming coincidentally with the need for filling upstream reservoirs, I am asking that your District, and all others in the lower basin having contracts with the Secretary of the Interior for delivery of Colorado River water, voluntarily re-examine and re-evaluate water requirements for the remainder of this calendar year, with the objective of reducing where at all possible the amounts called for on the weekly water schedule. Similarly, I am asking that in the preparation of schedules of water requirements for calendar year 1964 you exercise the utmost frugality in proposed water use.

I am not suggesting at this time that an emergency exists, or that a serious situation requiring that the United States reduce deliveries to contractors should be anticipated for 1964. Nevertheless, it is clear that unless at least normal flow into Lake Mead is experienced in 1964, a very grave water supply problem is posed. Whether that problem is such as to require formal declaration of a shortage, and subsequent reduction of deliveries by the United States, will await evaluation of the 1964 probable runoff.

Exhibit 3

[ 97 ]



Identical letters have been sent to all lower basin entities having water contracts with the Secretary of the Interior.

Sincerely yours,

A. B. West

A. B. West  
Regional Director

Identical letter to:

Mr. Lowell O. Weeks, Mgr., Coachella Valley County Water Dist.,  
Coachella, California  
Mr. James Ferguson, President, North Gila Valley Irrigation Dist.,  
Yuma, Arizona  
Mr. Howard V. Moore, President, Holston-Mohave Irrigation & Drainage Dist.,  
Holston, Arizona  
Mr. E. E. Meyer, Manager, Yuma Mesa Irrigation & Drainage Dist.,  
Yuma, Arizona  
Mr. Bruce Martin, President, Palo Verde Irrigation Dist., Blythe, California  
Mr. Joseph Jensen, Chairman, Metropolitan Water District of Southern  
California, Los Angeles  
Mr. Everett C. Barclay, President, Dard Irrigation Dist., Dard, California  
Mr. Sam E. Dick, President, Yuma County Water Users' Association,  
Yuma, Arizona  
Mr. G. C. Morse, President, Utah & Irrigation & Drainage Dist.,  
Yuma, Arizona

cc:  
Commissioner, Attn: 400 and 120  
Regional Solicitor, Los Angeles Region  
Project Manager, Yuma

cc: 100  
120  
400 ✓

Investigative  
in  
file

Daily



256-

811

RECEIVED  
OFFICE OF THE  
DIRECTOR

Rec'd MAY 7 1964

3-400

May 5, 1964

TO	INIT.	DATE
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470	W	
400	L	
551		

Mr. T. R. Meyer, Manager  
Yuma Mesa Irrigation and Drainage District  
Route 3, Box 32  
Yuma, Arizona

Dear Mr. Meyer:

This will confirm my telephone call to you yesterday afternoon, in which I requested your earnest consideration of a ten percent reduction in diversion of water from the Colorado River for the remainder of the year, commencing May 15, 1964.

As we have discussed from time to time, the outlook for Colorado River runoff is very poor for the April-July period of this year. Coupled with the filling problems at Lake Powell, an unusually difficult situation is posed.

I should appreciate receiving your reaction to the proposed cut by May 11, 1964, preferably in writing. The cut for your District would be computed as ten percent of the remaining scheduled diversion for this calendar year, 193,000 acre-feet, or a reduction of 19,300 acre-feet.

Sincerely yours,

A. B. West

A. B. West  
Regional Director

cc:  
Commissioner, Attn: 400 and 120, Washington, D.C.  
Regional Solicitor, Los Angeles, California  
Project Manager, Yuma, Arizona

Exhibit No. 5

110

232.

GMA

BUREAU OF RECLAMATION  
OFFICIAL FILE COPY

Rec'd MAY 22 1964

3-100

MAY 19 1964

TO	INIT.	DATE
11400/28		5-22
430	P.B.	5-25
120	S	5-27
951		

Mr. E. E. Winebarger, President  
Yuma Mesa Irrigation and Drainage District  
Route 3, Box 32  
Yuma, Arizona

Dear Mr. Winebarger:

At the meeting in Las Vegas on May 16, 1964, which you attended, Secretary Udall announced that the ten percent cut in diversions of water from the Colorado River for the remainder of this calendar year, which I asked for in my letter to you of May 5, 1964, now is mandatory. I therefore have the responsibility of applying this reduction to the gross diversions to the Yuma Mesa Irrigation and Drainage District.

The ten percent cut will be effective June 1, 1964, and must therefore be reflected in your water orders submitted on May 27, 1964, in accordance with our current operating procedure, for inclusion as a part of the Master Schedule.

The amount of 176,000 acre-feet was scheduled for diversion to the Yuma Mesa Irrigation and Drainage District for the seven-month period of June through December 1964. This amount will therefore be reduced by 17,600 acre-feet, to 158,400 acre-feet. You may, of course, augment this by utilizing drainage water pumped within the boundaries of your District. The Bureau of Reclamation does not ask that each week's diversion, or even each month's, be reduced by an arbitrary ten percent. So long as the total diverted at Imperial Dam for your use for the seven-month period beginning June 1, 1964, does not exceed 158,400 acre-feet, the objective of water conservation will have been achieved in this year of scant supply.

If you wish to vary the monthly diversions, please meet promptly with Project Manager T. R. Moser of our Yuma Projects Office and provide him with a revised schedule. This schedule should not, of course, be made unrealistic by deferring until later months in this year an unduly large portion of the 17,600 acre-foot reduction. Please submit a new schedule of estimated monthly diversions for the period June 1 through December 31, 1964, as soon as you have met with Mr. Moser, but not later than your May 27 water order submittal.

Exhibit No. 6

Copy to 150

All water ordered for a given week by your District, and available for diversion at Imperial Dam, will be charged to your District account whether taken or not. To do otherwise would result in loss of content in Lake Mead to no purpose, and in excess water being available to Mexico.

I appreciate the special requirements for citrus, as mentioned in your letter of May 12, 1964, to me. We have from time to time discussed the feasibility of a somewhat different method of irrigation for the citrus on the Yuma Mesa, most of which has now reached a stage of near maturity. While undoubtedly additional labor cost would be involved in a modified system of irrigation which did not flood the entire area, I am sure you will agree that as water becomes more and more short in supply these labor costs inevitably must be increased. They are very small in relation to the cost of replacing water in the Yuma area from a transbasin diversion. Such transbasin diversion, as discussed in Secretary Udall's Pacific Southwest Water Plan, will eventually be required. In the meantime, it is incumbent upon all of us that we use the existing supplies with the greatest of frugality. Experience has generally shown throughout all of Reclamation that closer attention to irrigation practices frequently results in greater net profit. The cut of ten percent is therefore not considered to be in any manner penalizing to the Yuma Mesa Irrigation and Drainage District.

Please call me if you desire to talk further regarding details of this reduction in water diversion.

Sincerely yours,

A. B. West

A. B. West  
Regional Director

bc:  
✓ Commissioner, Washington, D.C. (In duplicate) Attention: 400 and 120  
Regional Solicitor, Los Angeles, California  
Project Manager, Yuma, Arizona

YUMA MESA IRRIGATION AND DRAINAGE DISTRICT  
COUNTY 14th AND 4th AVENUE  
YUMA, ARIZONA

RT. 3, BOX 32

*Exhibit 7*

BOARD OF DIRECTORS

E. E. WINEBARGER, PRESIDENT  
ELDON PAULSEN  
CHARLES E. WAITS

T. R. MEYER, GEN. MGR.  
E. V. CROY, EXECUTIVE SECRETARY  
THADD BAKER, ATTORNEY

May 28, 1964

A. B. West  
Regional Director  
Bureau of Reclamation  
Boulder City, Nevada

In Re: 1964 Rescheduling of Water

Dear Mr. West:

Thanks for your letter of May 19, 1964, pertaining to the implementation of Secretary Udall's announced ten per cent cut in water use to lower Colorado River water users. Since receiving your letter, our Board of Directors have had numerous conferences with not only landowners, but with our manager, watermaster, and others in order to conscientiously review our water history in the light of your request. The conclusions we have reached are reflected in the schedule attached hereto, which has been submitted to Mr. Moser, the Yuma Project Manager, pursuant to your direction.

The total proposed water usage for the remaining seven months of the year reflected by the schedule is 164,380 acre feet. You will note that our heaviest water use under this proposed schedule is for the months of June, July, August, and September made necessary be reason of the extreme heat, the new plantings of citrus and the formation of the fruit. It is imperative that these months have the amounts of water set forth in this schedule.

In arriving at this figure we reviewed carefully our 1964 water order. An examination of this order disclosed that the requested order was actually less than actual uses in 1962 and 1963. This schedule is conservative and in line with the previous oral request that you have made to us to conserve water, if at all possible. The 1964 schedule, however, is unrec-

istic, particularly with reference to the month of September, which under the 1964 schedule is listed at 25,000 acre feet. This figure inadvertently was based upon the actual 1963 use figure of 24,598 acre feet. The proposed order for September failed to take into consideration the extreme amount of precipitation which we experienced in September, 1963 as for the first time in years we received one particular rain fall of approximately  $2\frac{1}{2}$  inches. This necessarily reduced our use in this month. Simple proof of this fact is demonstrated by the actual use in 1962, a normal September, wherein we used 31,394 acre feet.

In order to approach this problem realistically, therefore, and we assume that is the only basis you want to evaluate water usage, in our rescheduling we have corrected this error. In line with Secretary Udall's statement in Nevada, we have used the average 1962 and 1963 use figures corrected to reflect an average September by adding 6,796 acre feet for that month to arrive at an average seven months use figure of 182,664 acre feet. We thereupon have arbitrarily reduced this usage figure by ten per cent to arrive at the figure above named, or 164,380 acre feet.

To adhere to the proposed cut suggested in your letter would penalize us with a thirteen per cent cut over average use rather than ten per cent, as suggested by the Secretary.

In view of your further pronouncement that the District will be chargeable with water ordered, whether delivered or not, another year of above average rainfall would be of no benefit to us as we could be charged with this water, even though not used.

The schedule is submitted, therefore, with the understanding that it may be varied from time to time in our weekly orders, commensurate with weather conditions and that water not ordered for any particular month will be available for order in later months.

As you well know, the Yuma-Arizona is a closed system and every drop of water brought into the district is put to beneficial use. The District, since its take-over from the United States, has had experienced, competent personnel and has used the most efficient methods to accomplish conservation

of water and water deliveries. You will note by examination of the record that since the Irrigation District has taken over its can works from the Bureau of Reclamation in 1959, we have operated with system losses approximately 1/3 of the losses previously experienced. The cut in usage, therefore, will have to be a cut in cultural practices at the individual farm level. We have no way of knowing what the economic effect this mandate will have upon our district; however, we are in good conscience going to attempt to abide by it.

In your letter you indicate that you feel that a more feasible system of irrigation should be employed for citrus on the Yuma-Mesa. This statement is apparently based on your further reflection that the most of the citrus is in a stage of near maturity. The Yuma-Mesa is fortunate in that the citrus growers in the area are representatives of the major citrus organizations in the country, nation-wide in scope, who, with their years of experience have arrived at the optimum in good cultural practices. The methods employed, therefore, reflect the considered judgment of some of the most successful citrus organization in the country.

From time to time too, we have requested that you visit our district to actually inspect the farming methods employed and the amount of new citrus in order that you would have a better understanding of our problems. Your statement that the District has reached, in its development of citrus, a stage of maturity simply is not correct. At the present time there is approximately 5,000 acres of new and interplanted citrus. The water toll for this acreage necessarily is higher than that for the more mature areas due to our extreme heat, low humidity, and soil type. With regard to the more mature citrus, it would be impossible on short notice to change the border system employed, as any disturbance of the soil surrounding this citrus would impede and destroy the citrus fruit which is just beginning to set. Any such action taken at the present time would result in a destruction of this year's crop in order to save the trees. This, of course, would bring economic disaster to the area and jeopardize the financial position of the whole district.

With further reference to cultural practices, new, young, single planted citrus has been double bordered or weeded in a manner designed to



save water and speed up irrigation. The determining criteria has been, and always will be, effective cultural practices, rather than labor cost.

We point out the above information not from the spirit of argument, but to draw your attention to the fact that an arbitrary ten per cent cut in our water order is extremely unrealistic and with no factual background whatsoever. The Secretary places us therefore, in a position where we must gamble with the future of a multi-million dollar industry in Yuma County to effect a water conservation program designed primarily to satisfy the demands of the upper basin states for filling Lake Powell.

We take special note of your letter with regard to further discussions regarding special problems and to Secretary Udall's statement in Las Vegas, May 16, 1964, that "the door will always be open to users with special problems". We welcome an opportunity to discuss this matter further with you and we suggest that if at all possible a meeting be arranged in Yuma, where more adequate data is available, and you can personally inspect and see the problem first hand.

We would like to make it crystal clear that we do not feel that the Secretary of the Interior is justified under the law or under our contract in making this arbitrary determination. We do not concede, either legally or factually, that the district is wasting water or making an uneconomic use of water. The water users in our district are economical when judged against the system designed by the Bureau of Reclamation soil type, crops grown, and cultural practices.

The enclosed schedule, therefore, is submitted under protest with full reservation of all right, or legal recourse which the District, or its farmers may have to contest, or refute such decision.

Sincerely,

E. E. McInnis



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The enclosed schedule, therefore, is submitted under protest with full reservation of all rights, or legal recourse which the District, or its farmers may have to contest, or refute such decision.

Sincerely,

E. E. McInerney



Exhibit E

Contract No. 14-06-W 102

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

GILA PROJECT  
YUMA MESA DIVISION

Repayment Contract with Yuma Mesa  
Irrigation and Drainage District

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

GILA PROJECT  
YUMA MESA DIVISION

Repayment Contract With Yuma Mesa  
Irrigation and Drainage District

1. THIS CONTRACT, made this 26th day of May,  
1956, pursuant to the Act of Congress approved June 17, 1902 (32 Stat.  
328), and acts amendatory thereof or supplementary thereto, particularly  
the Act of December 21, 1928 (45 Stat. 1057), as amended, the Act of  
August 4, 1939 (53 Stat. 1187), as amended, the Act of July 30, 1947  
(61 Stat. 628), the Act of July 1, 1954 (68 Stat. 361), designated the  
Interior Department Appropriation Act, 1955, and the Act of January 28,  
1956 (Public Law No. 394, 84th Congress, 2nd Session), and Title 45, and  
particularly Sections 45-1691 to 45-1698, inclusive, of the Arizona  
Revised Statutes, between THE UNITED STATES OF AMERICA, hereinafter  
referred to as the "United States", represented by the Secretary of the  
Interior, hereinafter referred to as the "Secretary", and YUMA MESA  
IRRIGATION AND DRAINAGE DISTRICT, an irrigation and drainage district  
created, organized and existing under and by virtue of the laws of  
the State of Arizona, and with its principal place of business at Yuma,  
Arizona, hereinafter referred to as the "District";

WITNESSETH:

Explanatory Recitals

2. WHEREAS, the United States has constructed or partially constructed and is now engaged in the operation and maintenance of certain irrigation works situate in the State of Arizona, known as and designated the Gila Project, hereinafter referred to as the "project"; and

3. WHEREAS, the parties hereto desire to enter into a contract, in accordance with and subject to the provisions and conditions hereinafter set forth, providing, among other things, for the delivery to the District from project works heretofore constructed of a supply of water for the irrigation of the irrigable lands situate within the District not to exceed 25,000 irrigable acres, all of which lands are also situate within the Yuma Mesa Division of the project, hereinafter referred to as the "division", and for the operation and maintenance of carriage and distribution works to be utilized in connection with the irrigation of such lands and for the construction, operation and maintenance of such other works as may hereafter be required for the lands now or hereafter within the District;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Delivery of Water by United States

4. As far as reasonable diligence will permit, the United States will, from and after such time as this contract is binding on the parties hereto, from storage available in Lake Mead, divert at Imperial Dam and



deliver to or for the District through the Gila Gravity Main Canal, at or near Station 1099/56.69 of said canal, such quantities of water, including all other waters diverted for use within the District from the Colorado River, as may be ordered by the District, the present boundaries of which are described in the exhibit marked "Exhibit A", attached hereto and by this reference made a part hereof, and as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres situate therein; subject to the availability of such water for use in Arizona under the provisions of the Colorado River Compact and the Act of December 21, 1928 (45 Stat. 1057), and subject to:

(a) The availability of water for the division under the provisions of the Colorado River Compact, the Act of December 21, 1928 (45 Stat. 1057), and the Act of July 30, 1947 (61 Stat. 628); provided, however, that the quantities of water the District shall be entitled to receive under this contract shall not, in any event, exceed an appropriate and equitable share of the quantities of water available for the division, all as determined by the Secretary;

(b) Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the

Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol, signed at Washington on November 14, 1944, supplementary to the treaty;

(c) The express understanding and agreement by the District that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13 (a) of said Act of December 21, 1928; and third, for power, and furthermore that this contract is made upon the express condition and with the express covenant that the United States and the District shall observe and be subject to and controlled by said Colorado River Compact and said Act of December 21, 1928, in the construction, management and operation of Hoover Dam, Lake Mead, canals and other works and the storage, diversion, delivery and use of water to be delivered to the District hereunder; and

(d) The other terms, conditions and provisions set forth in this contract;

Provided, however, that the maximum rate of diversion at Imperial Dam of water for delivery hereunder shall be five hundred and twenty (520) cubic feet per second; and provided, further, that the United States reserves the right temporarily to discontinue or reduce the amount of water to be delivered to the District whenever such discontinuance or reduction is made necessary for purposes of investigation, inspection, replacements, maintenance or repairs to any works whatsoever utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that as far as feasible the United States will give the District reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents, employees, successors and assigns shall not be liable for damages when, for any reason whatever, suspensions or reductions in delivery of water occur. Subject to the terms, conditions and provisions set forth in this contract, this contract is for permanent water service.

#### Measurement of Water

5. The water to be diverted for delivery hereunder will be measured at Imperial Dam by means of measuring devices installed or to be installed and operated and maintained by the United States; provided, however, that if for any reason any of said measuring devices are not installed, or if said measuring devices, subsequent to their installation, for any reason fail, in the opinion of the Project Manager, Yuma Projects Office, hereinafter referred to as the "Project Manager", to operate satisfactorily, the Project Manager will, from the best information

available, determine the amount of water received hereunder by the District. Said measuring devices and all controlling devices heretofore or hereafter installed shall be and at all times remain under the complete control of the United States, whose authorized representatives may at all times have access thereto over the lands and rights of way of the District.

Responsibility for Distribution and Use of Water

6. The District shall hold the United States, its officers, agents, employees and successors or assigns harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, carriage, handling, distribution or use of all water delivered or taken hereunder. The District shall not use any of the water delivered or taken hereunder on any lands other than those irrigable lands situate within the District and shall not cause or permit any such use.

Construction by United States and by District

7. (a) Pursuant to the Act of March 4, 1921 (41 Stat. 1367, 1404), the United States, at its option, may perform with funds contributed by the District any construction, maintenance or other work which is not otherwise provided for by this contract. The United States shall not undertake any such work unless funds therefor are advanced by the District as directed by the Secretary. The advance shall be accompanied by a certified copy of a resolution of the District's Board of Directors describing the work to be done and authorizing its performance by the

United States with the District's funds. After completion of any work so undertaken, the United States shall furnish the District with a statement of the cost of the work done. Any unexpended balance of the funds advanced will be refunded to the District or applied as otherwise directed by the District.

(b) In addition to the work which may be performed by the United States pursuant to Article 7(a) hereof, the United States will, subject to the availability of appropriations therefor, expend not to exceed the sum of One Million One Hundred and Fifty Thousand Dollars (\$1,150,000) toward (i) drainage surveys and investigations and the construction of drainage facilities and works which, in the opinion of the Regional Director, Region 3, Bureau of Reclamation, hereinafter referred to as "Regional Director", and the District are appropriate in a drainage program for the drainage of the lands in the District; (ii) the acquisition by the United States of the necessary rights of way for said facilities and works and the payment of compensation therefor; provided, however, that sums expended for the aforesaid purposes by the United States subsequent to December 1, 1954, shall be reimbursable by the District as part of the aforesaid One Million One Hundred Fifty Thousand Dollars (\$1,150,000), and provided, further, that if drainage works are constructed, the United States makes no warranty that such works will be effective for the purpose of draining said lands; (iii) the installation in the Yuma Mesa Pumping Plant of additional pump capacity of not to exceed 275 c.f.s.; and (iv) the construction of such buildings determined by the Secretary, after consultation with the District, to be appropriate in connection with the operation and maintenance of the

lands situate within the District, the cost of which, together with the value of buildings and equipment transferred to the District pursuant to Article 8 hereof, shall not exceed Two Hundred Thousand Dollars (\$200,000); and provided, further, that the One Million One Hundred and Fifty Thousand Dollars (\$1,150,000) and the aforesaid Two Hundred Thousand Dollars (\$200,000), the expenditure of which is provided for herein, shall be included in the unpaid balance of the general repayment obligation of the District referred to in Article 11(a) hereof and shall be allocated by the Secretary and repaid by the District in the manner set out in Article 11(b) hereof.

(c) Subject to the provisions of Articles 7(b) and 9 hereof, the District shall, at its own cost and without expense to the United States, construct, reconstruct, locate, relocate, enlarge, diminish, replace and/or install, and at all times care for and operate and maintain in good operating condition the works and facilities described below:

(i) Measuring devices adequate to measure the quantity of all waste water hereafter discharged beyond the District's boundaries, such devices to be installed in conformity with such specifications and at such locations as the Project Manager may prescribe, and to be accessible at all times to authorized representatives of the United States over the lands and rights of way of the District;

(ii) Such drainage works as may be necessary for the drainage of lands within the District; and

(iii) Such other works and facilities as may be necessary for the District's performance of any obligation on its part to be performed;

provided, however, that the District shall, in accordance with such terms and conditions as the Secretary may provide by notice to the District, care for and operate and maintain in good operating condition such works and facilities as may be constructed by the United States pursuant to Articles 7(a) and 7(b) hereof.

Operation and Maintenance of Constructed Works

8. (a) From time to time, the Secretary, upon written request from the District in the form of a resolution adopted by its Board of Directors, will and, in the absence of such a request, may, upon sixty (60) days' written notice to the District, transfer to it and the District shall assume the care, operation and maintenance of those works and appurtenances below Station No. 1099/56.69 on the Gila Gravity Main Canal, or Station No. 1/16.60 on the "A" Canal, as determined by the Regional Director, utilized or to be utilized in connection with the carriage of water to and the distribution of water within the District which, in the Secretary's opinion, may appropriately be so transferred at such time; provided, however, that no such transfer shall be made in the absence of a determination by the Secretary that operation of the works proposed for transfer has reached an orderly, routine basis and that the District has an operating organization qualified to undertake the operation and maintenance of such works and is able to finance such operation and maintenance on a satisfactory basis. Thereafter, except as herein otherwise provided, the District shall, at its own cost and without expense to the United States, care for and operate and maintain the works transferred



hereunder in such a manner that the same shall remain in as good and efficient condition and of equal capacity for the carriage, control and distribution of water, as when received from the United States hereunder, and shall use all practicable methods to insure the economical and beneficial use of water. In connection with any such transfer of works hereunder, the Regional Director shall furnish the District with a list of operating equipment owned by the United States which is determined by him to be available for transfer to the District and shall advise the District whether or not the transfer of care, operation and maintenance of the several items of operating equipment will include a transfer of title thereof to the District. In addition, the Regional Director shall advise the District as to what buildings are available for transfer to it, provided, however, that the total value of said equipment and buildings available for transfer to the District, as shown by the books of account of the United States, shall not exceed the sum of Two Hundred Thousand Dollars (\$200,000). The District may by written request in the form of a resolution by its Board of Directors make selections from the aforesaid list of those items of operating equipment the title to which it desires to have transferred to the District and of the available buildings it desires to have transferred to the District. Upon the transfer of any item of operating equipment or building, an amount equivalent to the value thereof, as shown by the books of account of the United States, shall be included in the unpaid balance of the general repayment obligation of the District

referred to in Article 11(a) hereof and shall be allocated by the Secretary and repaid by the District in the manner set out in Article 11(b) hereof. After the care, operation and maintenance of any such works, buildings or equipment shall have been assumed by the District, the District shall hold the United States, its officers, agents, attorneys, employees, and successors or assigns, harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the care, operation and maintenance thereof.

(b) If in the opinion of the Secretary the District shall have failed at any time, or from time to time, to perform substantially any provision of this contract, the United States shall give the District written notice specifying the respects in which the District shall have failed to so perform, and in the event that the District fails to cure such default within thirty (30) days following the giving of such notice, the United States may, on sixty (60) days' written notice to the District, resume the control of any of the works, buildings or equipment mentioned in subdivision (a) of this article and thereafter care for, operate and maintain the same. The rights of the United States hereunder shall not be diminished by reason of the transfer of title of any equipment to the District and the United States shall also have the right to assume control over any other equipment then available to the District for use in connection with its care, operation and maintenance of division works. In the event that notice is so given that the care,

operation and maintenance of the transferred works, buildings or equipment are to be resumed by the United States, the District shall advance to the United States within ten (10) days after written demand by the Regional Director, the estimated cost of all such care, operation and maintenance by the United States, plus fifteen (15) percent to cover supervision and administrative expense, during the period commencing with the date that the care, operation and maintenance of such works, buildings or equipment are to be assumed by the United States and terminating on the first day of January next succeeding. During such time thereafter as the United States shall retain the operation and maintenance of such works, buildings or equipment, the District shall, upon estimates therefor to be furnished by the United States on or before the May 1 next succeeding the giving of said written demand, advance to the United States in two (2) equal installments on December 31 next succeeding said May 1 and on June 30 next succeeding said December 31, the estimated cost of all such care, operation and maintenance, plus fifteen (15) percent to cover supervision and administrative expense, for the calendar year immediately following said December 31; provided, however, that in the event that the United States resumes the care, operation and maintenance of the works, buildings or equipment transferred hereunder on or after May 1 of any year, the estimate to be furnished by the United States for the ensuing calendar year may be given at such reasonable time as the Regional Director shall

determine. If, in the opinion of the Regional Director, the amount advanced by the District for any period is likely to be insufficient to pay the cost of all such operation and maintenance by the United States plus fifteen (15) percent to cover supervision and administrative expense during such period, additional and sufficient sums of money shall be paid forthwith by the District to the United States upon notice thereof and demand therefor by the Regional Director. The surplus of any amount so advanced by the District for operation and maintenance of such works, buildings or equipment by the United States during any period shall be credited on the estimated cost of operation and maintenance by the United States during the succeeding period. Any surplus of any advances made by the District for operation and maintenance which shall remain unobligated for such purpose by the United States as of such time as the care, operation and maintenance of such works, buildings or equipment are returned to the District shall be refunded to the District, or, at the option of the Regional Director, applied against any obligation of the District under this contract which may be due at that time. Nothing herein contained shall relieve the District of the obligation to pay, in any event, all payments under Articles 11 and 12 hereof, and interest as provided in this contract.

(c) Whenever the United States shall have resumed the care, operation and maintenance of any such works, buildings or equipment pursuant to the provisions of subdivision (b) of this article, the Secretary, upon written request by the District accompanied by assurances

satisfactory to him, may, upon sixty (60) days' written notice to the District, return the care, operation and maintenance of any such works, buildings or equipment to the District under the provisions of this contract.

(d) The right of the United States to control the care, operation and maintenance of any such works, buildings or equipment, pursuant to the provisions of this article, shall continue during the repayment period of this contract.

#### Keeping Works in Repair

9. Except in case of emergency, no substantial change in any of the works transferred to the District under the provisions hereof shall be made by the District without first having had and obtained the written consent of the Regional Director, and the Regional Director's opinion as to whether any change in any such works is or is not substantial shall be conclusive and binding upon the parties hereto unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or not supported by substantial evidence. The District shall promptly make any and all repairs to, and replacements of, all works transferred to it under the terms and conditions hereof which, in the opinion of the Regional Director, are deemed necessary for the proper operation and maintenance of such works.

#### Protection Against Claims

10. In the event that any claim of whatsoever nature heretofore or hereafter made against the United States results in costs which, in the

opinion of the Secretary, are wholly or partly chargeable against the District, the District shall pay to the United States such portion of said costs as the Secretary determines to be appropriately allocable to the District, at such rate as he may determine, in not more than ten (10) years.

Payment by District of General Repayment Obligation

11. (a) The District will pay to the United States (1) Three Million Nine Hundred Ninety-four Thousand and No/100 Dollars (\$3,994,000.00), representing the District's share, pursuant to the Act of January 28, 1956 (Public Law No. 394, 84th Congress, 2nd Session), of the capital costs of all works heretofore constructed which are utilized or to be utilized in connection with the carriage, delivery and/or distribution of water to the irrigable land of the District. In addition, the District will pay to the United States (2) Two Hundred Ninety-seven Thousand One Hundred Sixty-seven and 45/100 Dollars (\$297,167.45), representing the unpaid operation and maintenance charges allocable to the lands in the District for the period through June 1954; (3) One Million, One Hundred and Fifty Thousand Dollars (\$1,150,000), representing the estimated cost of the drainage surveys and investigations and the drainage works constructed and which may be constructed and the pump facilities which may be installed in the Yuma Mesa Pumping Plant by the United States, pursuant to Article 7(b) hereof; (4) Two Hundred Thousand Dollars (\$200,000), representing the estimated value of buildings and equipment which may be constructed and/or transferred

to the District pursuant to Article 8(a) hereof; provided, however, that if the United States expends less than the amount set out in subdivision (3) of this article for the purposes stated therein and/or transfers buildings and equipment having a lesser value than the amount set out in subdivision (4) of this article, the District's obligation to the United States shall be reduced by an amount representing the sum of the difference between the amount actually expended for the purposes set out in subdivision (3) of this article and the amount set out therein and the difference between the value of the buildings and equipment actually transferred pursuant to subdivision (4) of this article and the amount set out therein. The aggregate of the aforesaid sums totaling Five Million Six Hundred Forty-one Thousand One Hundred Sixty-seven and 45/100 Dollars (\$5,641,167.45) is hereby designated and hereinafter referred to as the "general repayment obligation of the District".

(b) (i) The areas herein designated by the Secretary as Irrigation Blocks 1 and 2 are shown on Exhibit A. The development period for Irrigation Block 1 will expire December 31, 1957, and the development period for Irrigation Block 2 will expire December 31, 1961. Additional irrigation blocks may hereafter be designated by the Secretary. Water shall be delivered by the United States to the lands within said blocks on a water rental or toll charge basis per acre-foot of water per annum to be fixed by the Secretary each year and to be collected by the United States in advance of delivery of water until such time as the United States shall, in accordance with the provisions of this article as hereinafter set out, transfer to the District



the care, operation and maintenance of any of the works used in making water available to the District, at which time the provisions hereinafter set out shall become operative, or until Article 12 hereof becomes operative, at which time the District shall make the necessary collections and shall make advance payments to the United States pursuant to Article 12. Such water rental or toll charges of the United States shall be established each year for the lands in the District with the object of collecting within the District such aggregate sum as, in the Secretary's opinion, constitutes an appropriate share allocable to the District of the total cost, as estimated by him, of operation and maintenance (including supervision and administrative expense) of the component parts of Imperial Dam and appurtenant works, Laguna Dam, and of all Gila Project works to be utilized by the United States for the benefit of any of the lands situate within the District. Such allocable share shall consist of: (i) that part of the estimated cost of operation and maintenance of the component parts of Imperial Dam and appurtenant works and Laguna Dam which bears the same ratio to the total estimated cost of such operation and maintenance as the capacity provided therein for the District bears to the total capacity provided therein for the District and for all other agencies, and (ii) that part of the estimated cost of operation and maintenance of each of the other works referred to above which bears the same ratio to the total estimated cost of such operation and maintenance as 520 bears to the total capacity of each of said works; provided, however, that the District's share of the cost of

operating and maintaining the following works shall be computed on the basis of the following fractions:

Gila Headworks of Imperial Dam	520/2200
Gila Gravity Main Canal from Engineer Station 409/25 to Wellton-Mohawk Turnout at Engineer Station 793/18	520/2100
Gila Gravity Main Canal from Wellton-Mohawk Turnout at Engineer Station 793/18 to Yuma Mesa Pumping Plant at Engineer Station 1101/07	520/800
Yuma Mesa Pumping Plant	520/620

and, provided, further, that the cost of power utilized in pumping water at the Yuma Mesa Pumping Plant will be allocated to the District in the proportion that water pumped for the District bears to total water pumped. Any water rentals or toll charges collected by the United States from the lands within the District as of January 1, 1958, which, as determined by the Secretary, are in excess of the costs of operation and maintenance allocated hereunder by the Secretary to such lands for the period from June 30, 1954, to January 1, 1958, shall be credited to the operation and maintenance charges payable by the District under Article 12 hereof. Any deficiencies, as estimated by the Secretary, for the period beginning July 1, 1954, and terminating December 31, 1956, between the operation and maintenance costs of the United States allocated by the Secretary to the lands in Irrigation Block 1 and the water rentals or toll or other charges collected therefrom by the United States shall, in addition to all other charges due hereunder, be collected by and repaid to the

United States before December 31, 1957, the end of the development period for Irrigation Block 1, by the establishment of water rental or toll charges for calendar year 1957 for the District as a whole in an amount sufficient to return to the United States the costs of operation and maintenance allocated by the Secretary to the lands in the District for calendar year 1957, including said deficiencies. Any difference between actual costs and estimated costs shall be determined by the Secretary and shall be adjusted in the next succeeding estimate of operation and maintenance costs given to the District by the United States for payment to the United States. In addition, any deficiencies, as determined by the Secretary, for the same period beginning July 1, 1954, and terminating December 31, 1956, between the operation and maintenance costs of the United States allocated by the Secretary to lands in Irrigation Block 2 and the water rentals or toll or other charges collected therefrom by the United States shall, in addition to all other charges due hereunder, be repaid to the United States by the District as a whole in eight equal semiannual installments as determined by the Secretary, by adding one-eighth ( $1/8$ ) of the amount of said deficiencies to the operation and maintenance advances to be made semiannually by the District to the United States pursuant to Article 12 hereof for each of calendar years 1958 through 1961. Any operation and maintenance deficit, as determined by the Secretary, incurred by the United States for calendar year 1957 shall be paid by the District to the United States

in two (2) equal semiannual installments on the basis of the written estimate for calendar year 1958 submitted to the District pursuant to Article 12 hereof which shall include the amount of said deficit. Adjustment for overpayments and for deficiencies between the actual costs and the estimated costs, as determined by the Secretary, shall be made in the next succeeding estimate of operation and maintenance costs given to the District by the United States for payment to the United States; provided, however, that on or before the May 1 following the close of the development period of each irrigation block the Secretary shall notify the District of any deficiency, as determined by him, between the total amount of operation and maintenance costs allocated hereunder to said irrigation block and the total amount of water rentals or toll or other charges collected by the United States from or on behalf of said irrigation block during its development period subsequent to June 30, 1954; the District shall pay such amount to the United States in two (2) equal installments on December 31 next succeeding said May 1, and on June 30 next succeeding said December 31. In the event that the United States, on or before December 31, 1957, transfers to the District, pursuant to Article 8 hereof, the care, operation and maintenance of any works employed in making water available to the District, the District shall, on the basis of a written estimate to be made by the Secretary and delivered to the District prior to said transfer, pay to the United States prior to December 31, 1957, in two (2) equal installments the amount of the aforesaid deficiencies, if any, estimated by the Secretary to be allocated to Irrigation Block 1 and the costs of care, operation

and maintenance from the date of the transfer through December 31, 1957, as determined by the Secretary, for those works likewise employed for the irrigation of said lands and not transferred to the District for its care, operation and maintenance but reserved for care, operation and maintenance by the United States, which payments shall be subject to the same provisions contained in Article 12, including but not limited to those covering payments for deficiencies and adjustments for overpayments. Such estimate shall be established by the Secretary with the object of collecting from the District as a whole all costs of care, operation and maintenance of all works that are employed for the benefit of said lands but which are reserved for operation by the United States. In the event that the United States, after December 31, 1957, transfers to the District, pursuant to Article 8 hereof, the care, operation and maintenance of any works employed in making water available to the District, the District shall, on the basis of a written estimate to be made by the Secretary and delivered to the District prior to said transfer, advance to the United States prior to the end of the calendar year in which the transfer is made, in two (2) equal installments, all as determined by the Secretary, the costs of the care, operation and maintenance of those works likewise employed for the irrigation of said lands and not transferred to the District for its care, operation and maintenance but reserved for care, operation and maintenance by the United States, as well as the amounts provided for herein to cover delinquencies for

prior years. Appropriate allowance will be made in the estimate for the advance payments to the United States made by the District pursuant to Article 12 hereof, the provisions of which shall cover payments due the United States following the year in which the care, operation and maintenance of works is transferred to the District, including but not limited to those provisions covering payments for deficiencies and adjustments for overpayments.

(ii) The general repayment obligation of the District shall be allocated by the Secretary to the lands in Irrigation Blocks 1 and 2 as follows: All of the lands within the District in Irrigation Blocks 1 and 2 classified and placed in Class 2 and in Class 3, according to the "Land Classification Report, Unit One, Yuma Mesa Division, Gila Project, Arizona, May 1949", as amended, copies of which are on file in the offices of the District, Regional Director, and the Project Manager, are shown on Exhibit "B" entitled "List of Lands and Land Classes in the District", attached hereto and by this reference made a part hereof. Said classifications shall not be subject to change during the repayment period of this contract. Subject to the proviso hereinafter set out in subparagraph (iii) of this article, the Secretary shall determine the obligation of each irrigation block by apportioning the general repayment obligation of the District among the aforesaid land classes as herein set out. The allocation of those portions of the general repayment obligation of the District set out in Article 11(a)(1) and 11(a)(2) against each acre of Class 2 land shall be Two Hundred Seventy-three and 69/100 Dollars (\$273.69) per irrigable acre and against each acre



of Class 3 land shall be One Hundred Twenty-five and 90/100 Dollars (\$125.90) per irrigable acre. The remainder of the general repayment obligation of the District shall be allocated equally against each irrigable acre of land in Classes 2 and 3. No portion of said obligation shall be allocated to lands not included either in Irrigation Blocks 1 or 2 for which no irrigation works have been constructed. The portion of the general repayment obligation of the District allocated to Irrigation Block 1 is Three Million Four Hundred Sixty-three Thousand Nine Hundred Six and 81/100 Dollars (\$3,463,906.81) and the portion thereof allocated to Irrigation Block 2 is Two Million One Hundred Seventy-seven Thousand Two Hundred Sixty and 64/100 Dollars (\$2,177,260.64). In the event the United States does not expend the amount provided in Article 11(a)(3) hereof for the purposes set out therein and/or does not transfer to the District buildings and/or equipment in the amount provided for in Article 11(a)(4) hereof, the Secretary shall notify the District in writing of the extent to which the general repayment obligation of each irrigation block is decreased.

(iii) The general repayment obligation of the District shall be paid in successive annual installments at the rates set out herein. Each annual installment may be paid in two (2) parts. The first half of each such annual installment shall be due and payable on or before each January 1 beginning with January 1, 1958, for the lands in Irrigation Block 1 and on or before each January 1 beginning with January 1, 1962, for the lands in Irrigation Block 2. The second half of each such annual installment



shall be due and payable on or before the July 1 following each such January 1. For the portion of the general repayment obligation of the District allocated to the lands in Irrigation Block 1 the District shall pay the United States annually as follows: Seventeen Thousand Three Hundred Nineteen and 53/100 Dollars (\$17,319.53) for each of the first ten (10) calendar years commencing January 1, 1958; Thirty-four Thousand Six Hundred Thirty-nine and 07/100 Dollars (\$34,639.07) for each of the second ten (10) calendar years thereafter; Seventy-three Thousand Six Hundred Eight and 02/100 Dollars (\$73,608.02) for each of the next forty (40) calendar years thereafter, or until the full amount of the general repayment obligation of the District allocated to said lands has been paid, whichever is sooner. For the portion of the general repayment obligation of the District allocated to the lands in Irrigation Block 2 the District shall pay the United States annually as follows: Ten Thousand Eight Hundred Eighty-six and 30/100 Dollars (\$10,886.30) for each of the first ten (10) calendar years commencing January 1, 1962; Twenty-one Thousand Seven Hundred Seventy-two and 61/100 Dollars (\$21,772.61) for each of the second ten (10) calendar years thereafter; Forty-six Thousand Two Hundred Sixty-six and 79/100 Dollars (\$46,266.79) for each of the next forty (40) calendar years thereafter, or until the full amount of the general repayment obligation of the District allocated to said lands has been paid, whichever is sooner. In addition to all other charges provided for herein, and subject to Article 11(e) hereof and to the proviso hereinafter set out, the District shall levy assessments

against each acre of irrigable land within the District as set out in Exhibit "B" hereof, and each such acre shall pay as its share of the general repayment obligation of the District an amount sufficient to pay the following sums: each acre of Class 2 land shall pay One and 71/100 Dollars (\$1.71) per year for the first ten (10) year calendar period following the end of the development period for the irrigation block in which said lands are situated, Three and 42/100 Dollars (\$3.42) per year for the second ten (10) year calendar period following the end of said development period, and Seven and 25/100 Dollars (\$7.25) per year thereafter for the next forty (40) years or until the full amount of that portion of the general repayment obligation of the District allocated to said lands has been paid, whichever is sooner; each acre of Class 3 land shall pay Ninety-seven Cents (\$0.97) per year for the first ten (10) year calendar period following the end of the development period for the irrigation block in which said lands are situated, One and 94/100 Dollars (\$1.94) per year for the second ten (10) year calendar period following the end of said development period, and Four and 11/100 Dollars (\$4.11) per year thereafter for the next forty (40) years or until the full amount of that portion of the general repayment obligation of the District allocated to said lands has been paid, whichever is sooner, provided, however, that where any subdivision described in said Exhibit "B" contains both Class 2 and Class 3 lands, the District shall annually assess said lands for the repayment to the United States of that portion

of the general repayment obligation of the District on the basis of an average amount arrived at by multiplying the number of acres of Class 2 and Class 3 land in said subdivision by the amounts and at the rates set forth in said schedule and dividing the total by the total number of acres of Class 1 and Class 2 land in said subdivision, and provided further, that on sale or other subdivision of any portion of an aforementioned subdivision, each acre of Class 2 or Class 3 land therein shall continue to be assessed by the District. Nothing contained herein shall, in any event, relieve the District or a whole and all of the lands now or hereafter in the District of the obligation to pay to the United States, when and when due, any amount or obligation which, by the terms of this contract, is made the general obligation of the District to fulfill or pay, regardless of the details or failure of any tract or landowner in the payment of any assessments, taxes, or other charges levied for such or any other purpose. The District may elect to pay annual installments in accordance with the variable formula described in subdivision (c) of this article, subject to the substitution from time to time of one or more other formulas as provided in said subdivision (c) of this article, it being understood that the aggregate of said successive annual installments to be paid by the District shall, in any event, equal the full amount of said repayment obligation.

(iv) Upon the validation of this contract pursuant to Article 29 hereof, any of the Contracts and Mortgages Covering Pre-development Charges shown on Exhibit "C", attached hereto and by this

reference made a part hereof, will, subject to the following conditions, thereafter be released by the United States:

(1) Each mortgagor, or successor in interest thereto who is obligated under said Contract and Mortgage Covering Predelivery Charges, shall make an appropriate application to the Project Manager on a form to be supplied by him for the cancellation of the aforesaid mortgage and the release of the lands covered thereby from the lien therein described;

(2) The mortgagor or his successor in interest agrees for himself, his heirs, Executors, Administrators, assigns and successors in interest to the lands covered by said mortgage that in consideration of the cancellation of the aforesaid mortgage and the release of the lands from the lien therein described, the lands which are the subject of the existing Contract and Mortgage Covering Predelivery Charges shall, even though released from said mortgage, remain and be liable for the payment of assessments which shall be levied by the District for the purpose of liquidating the unpaid balance provided for in said mortgage, which unpaid balance shall include all payments owing to the United States and which are past due, plus interest thereon, and that

beginning with the first assessments of said lands for the payment of that portion of the general repayment obligation of the District allocated thereto, said lands shall be assessed each year by the District for repayment to the United States pursuant to the provisions hereof an amount computed as follows: for the first ten (10) year calendar period following the end of the development period for the irrigation block in which said lands are situated, the annual assessment shall be one-half of one percent (0.5%) of the unpaid balance of said mortgage; for the second ten (10) year calendar period following the end of said development period one percent (1.0%) of said unpaid balance; and two and one-eighth percent (2.125%) of the unpaid balance of said mortgage thereafter annually for the next forty (40) years, provided, however, that the unpaid balance of said mortgage or any part thereof may be paid at any time prior to the dates set out herein, and provided, further, that in the event the release of a mortgage is applied for after the first assessments of said lands for the payment of that portion of the general repayment obligation of the District allocated thereto, said unpaid balance of the mortgage

upon its release shall be repaid by equal annual assessments within the balance of the sixty (60) years remaining after the first assessments of said lands for the payment of the general repayment obligation of the District. Said mortgagor or his successor in interest agrees for himself, his heirs, Executors, Administrators, assigns or successors in interest to said lands covered by the aforesaid mortgage, to pay said assessments until said unpaid balance of said mortgage shall have been paid in full. The aforesaid assessment shall be in addition to the taxes, charges and other assessments necessary to meet other obligations of the District.

(3) The District shall collect said assessments and, to the extent said assessments are collected by the District, shall pay such sums or their equivalent amounts to the United States on the dates set out in this contract for the payment of the installments due on the general repayment obligation of the District;

(4) In the event that the mortgagor, or his heirs, Executors, Administrators, assigns or successors in interest to said lands covered by the aforesaid mortgage, are delinquent in making payment of any assessment due pursuant to this article, the District will take every

action available to it, either through enforcement of its lien and the sale of said land, or otherwise, to effect collection of the unpaid assessment; provided, however, that the District shall pay each said assessment as it becomes due during any period in which the District may hold the title to said lands, and provided, further, that the District shall, upon disposal of said lands, collect the amount of delinquent installments then the purchaser or transferee of said lands and shall continue to levy and collect said assessments against said lands and make payments thereof to the United States when so collected, so that, in any event and regardless of any defaults or delinquencies, the amounts becoming due the United States hereunder representing the said unpaid balances of the released mortgages shall be paid to the United States;

(5) Applicant agrees for himself, his heirs, Executors, Administrators, assigns, or successors in interest to said lands covered by the aforesaid mortgage, that in the event the lands or farm unit described in said mortgage shall be subdivided, each acre thereof shall continue to be responsible and liable for its pro-rata share of the unpaid balance of the debt due to the United States despite the cancellation



of the Contract and Mortgage Covering Predevelopment Changes, except, however, that where, in the opinion of the District and the Regional Director, Region 3, Bureau of Reclamation, United States Department of the Interior, the subdivision is so small that the cost of processing such assessments would be unreasonable, the unpaid balance of such Contract and Mortgage Covering Predevelopment Changes shall be paid in full by the mortgagor, his heirs, Executors, Administrators, assigns, or successors in interest to said lands covered by the aforesaid mortgage.

(c) On or before any March 15 during the term of this contract, the District Board of Directors may notify the Secretary in writing that, following the July 1 payment as heretofore provided in Article II(b), the District elects to make payment of annual installments beginning January 1 of the next year in accordance with the variable formula hereinafter set out. On June 1 of the year in which the Secretary receives notice of such election by the District, and on June 1 of every year thereafter during the term of this contract, the Secretary shall announce the amount of the annual installment which shall next be due. The amount of each annual installment payable under this subdivision (c) shall be determined by dividing the unpaid balance of the repayment obligation of each irrigation block by the number of years remaining in the repayment period, by multiplying the result of

such division by the price index factor, and then by multiplying the product so obtained by the agricultural parity ratio, subject to the following definitions and provisions:

(1) The "Price index factor" is that number which represents the ratio between the index of prices received by farmers in the United States for farm commodities as of February 15 of the notice year and the index of average prices received by farmers in the United States for farm commodities during the period 1939 through 1944, all as determined by the Secretary;

(2) The "agricultural parity ratio" is the national agricultural parity ratio, as determined by the Secretary, for March 15 of the notice year;

(3) In making the determinations required in (c)(1) and (c)(2) above, the Secretary shall use the commodity price indices and the national agricultural parity ratios as determined by the Secretary of Agriculture under the provisions of Subchapter II of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C.A. 1301 et seq.), as it may be amended from time to time. If the commodity price indices and national parity ratios, which are basic to the determination of the annual installment under this subdivision

(c), are not available for any year, the annual installment due under this contract for such year shall be determined by the Secretary by dividing the unpaid balance of the repayment obligation of each irrigation block by the number of years remaining in the repayment period.

From time to time, the Secretary may, with the written consent of the District in the form of a resolution adopted by its Board of Directors, fix subsequent annual installments payable by the District on the basis of such other variable formula set out in such resolution as he considers; in the light of the cropping pattern then prevailing in the District, to be most likely to result in fixing each subsequent annual installment at the largest amount which the District can reasonably be expected to pay without undue hardship, bearing in mind that the aggregate of the successive annual installments to be paid by the District hereunder shall, in any event, equal the full amount of its general repayment obligation.

(d) Annual installments under subdivision (c) of this article shall not be more than two hundred per centum (200%) nor less than thirty per centum (30%) of the amount obtained by dividing the unpaid balance of the repayment obligation of each irrigation block by the number of years remaining in the repayment period.

(e) The general repayment obligation of the District as determined by the Secretary shall remain a general obligation of the District

as a whole notwithstanding the allocation thereof among two or more irrigation blocks in the District, and default of the lands in any block as to the obligation allocated to that block shall not relieve the District as a whole of liability as to that portion of its general repayment obligation. All lands now or hereafter in the District, as described in said Exhibit "A", are, as a whole, obligated to pay to the United States the full amounts of the general repayment obligation of the District and of all other obligations provided for in this contract, regardless of the default or failure of any tract or of any landowner in the payment of the taxes, assessments or other charges levied by the District against such tract or landowner, and the District shall, except as otherwise prohibited by law or by the provisions of Article 22 hereof, levy and collect taxes, assessments and/or other charges against all irrigable land in the District to which facilities for the distribution of water have been constructed, whether or not water is used, and shall levy a minimum annual operation and maintenance charge against each such irrigable acre whether or not water is used, and, in addition, the District shall, when necessary, levy and collect appropriate taxes, assessments and/or other charges to make up for the default or delinquency of any such tract of land or of any such landowner in the payment of taxes, assessments or other charges, so that in any event and regardless of any defaults or delinquencies in the payment of any taxes, assessments or other charges, the amounts becoming due the United States under this contract shall be paid to the United States by the District when due. Nothing in this

division of this article, however, shall be construed as in any manner affecting the time or rate of payment of the obligation allocated to each designated block.

(2) All costs, expenses, charges and obligations which the District is required to pay under this contract or otherwise which, under the terms of this contract or in the judgment of the Board of Directors of the District, are incurred or expended solely or principally for the use and benefit of the irrigable lands in any irrigation block or blocks or in any other area within the District, and for the allocation of which to such lands this contract makes no provision, may be included in the assessments, taxes, or other charges hereafter levied by the District upon the lands for the use or benefit of which such costs, expenses, charges or obligations are expended or incurred without including any part thereof in any levy upon other lands within the District. Notwithstanding the allocation under this article of any costs, expenses, charges or other obligations to any irrigation block or blocks or other area within the District, nothing contained in this article shall relieve the District as a whole and all of the lands now or hereafter in the District of the obligation to pay, in any event, to the United States, in full when due, any amount or obligation which, by the terms of this contract, is made the general obligation of the District to fulfill or pay, regardless of the default or failure of any owner or landowner in the payment of any assessments, taxes, or other charges levied for such or any other purpose.

Payments for District of Internal Operation  
and Maintenance Costs

12. (a) In addition to the payments provided for in Articles 8, 10, and 11 hereof, the District shall, on the basis of written estimates therefor to be made by the Secretary and delivered to the District on or before each May 1 commencing with May 1, 1957, the 10th year of the first development period, and continuing thereafter, levy all necessary taxes, assessments and/or other charges therefor and shall advance to the United States in semiannual installments on or before December 15 next succeeding each May 1 and the June 15 next succeeding said December 15, such sum, as in his opinion, constitutes an appropriate share allocable to the District of the estimated cost, including supervision and administrative expense, for the calendar year beginning January 1 next succeeding said December 15, of operation and maintenance of the component parts of Imperial Dam and appurtenant works, Laguna Dam and all Gila Project works to be utilized by the United States for the benefit of any of the lands situate within the District. Such allocable share shall consist of: (i) that part of the estimated cost of operation and maintenance of the component parts of Imperial Dam and appurtenant works and Laguna Dam which bears the same ratio to the total estimated cost of such operation and maintenance as the capacity provided therein for the District bears to the total capacity provided therein for the District and for all other agencies, and (ii) that part of the estimated cost of operation and maintenance of each of the other works referred to above which bears the same ratio to the total estimated

cost of such operation and maintenance as 520 bears to the total capacity of each of said works; provided, however, that the District's share of the cost of operating and maintaining the following works shall be computed on the basis of the following fractions:

Gila Headworks of Imperial Dam	520/2200
Gila Gravity Main Canal from Engineer Station 409/25 to Wellton-Mohawk Turnout at Engineer Station 793/18	520/2100
Gila Gravity Main Canal from Wellton-Mohawk Turnout at Engineer Station 793/18 to Yuma Mesa Pumping Plant at Engineer Station 1101/07	520/800
Yuma Mesa Pumping Plant	520/620

and provided further, that the cost of power utilized in pumping water at the Yuma Mesa Pumping Plant will be allocated to the District in the proportion that water pumped for the District bears to total water pumped. Differences between actual costs and estimated costs shall be determined by the Secretary and shall be adjusted in next succeeding estimates; provided, however, that if, in the opinion of the Regional Director, the amounts advanced by the District for any year are likely to be insufficient to pay the above-mentioned costs of operation and maintenance during such year additional and sufficient sums of money shall be paid forthwith by the District to the United States upon notice thereof and demand therefor by the Regional Director, provided that to the extent feasible, the United States will give the District reasonable



notice in advance of any such insufficiency. In the determination of the operation and maintenance costs payable by the District under Article 22(a), (b) hereof and under this article, the Secretary will credit the District with that portion of the revenues received by the United States from special water service deliveries which the Secretary determines are allocable to operation and maintenance costs of those portions of the District works utilized in making said water deliveries, which credit shall include a component covering such administrative expense incurred by the District which the Secretary deems appropriate, provided, however, that in the event the United States transfers to the District the operation and maintenance of any of the works utilized in making the aforesaid deliveries, the District agrees that it shall operate and maintain said works so as to continue to make water deliveries pursuant to said contracts. The balance of said revenues as well as all revenues from the disposal of Gila Project houses or other Gila Project property shall be retained by the United States and applied by the Secretary against those expenditures by the United States in behalf of the lands in the District which are not included within the general repayment obligation of the District. All revenues from the disposal of public lands within the District shall be retained by the United States for its own use and benefit.

(b) In the event that the United States hereafter transfers the care, operation and maintenance of any or all of the works described in subdivision (a)(1) of this article to any agency other than the District, the District shall, following the service by the Secretary of a

written notice to that effect, and in conformity with the provisions and conditions of such notice advance annually to such agency the same proportion of the estimated future costs of operation and maintenance of such transferred works, as provided in said subdivision; provided, however, that the District shall be obligated to make annual advances to the United States pursuant to this article with respect to all of such works covering the period when they are under the care, operation and maintenance of the United States.

(c) Whenever reference is made in this article to any works, such reference shall be deemed to include all structures appurtenant to such works and all facilities related thereto.

(d) Notwithstanding possible disposition by the United States of any transmission, substation or other electrical facilities the revenues and costs of which as of June 1954 were accounted for in the Parker-Davis Project, Arizona, the United States shall continue to be responsible for and shall deliver power and energy required for Gila Project purposes, including drainage pumping, in such amounts, at such times and at such voltages as needed for full project development and efficient operation, to project load centers and said power and energy shall be measured at those points of delivery. The cost to the District of such power and energy included in the operation and maintenance costs payable by the District pursuant to this contract shall not be affected by such disposition and shall in no event include any charge for transmission in excess of that which would have been included were the United

...directly to retain operation of the affected facilities. The cost to the District of such power and energy may be adjusted from time to time for changes in operation and maintenance costs but shall be determined in the same manner and on the basis of the same factors which prevailed in June 1954 in the case of disposition by the United States of any of said transmission, substation or other electrical facilities, which cost to the District as of June 1954, as determined on the basis of these factors, was 2-1/2 mills per kilowatt-hour for pumping service; provided, however, it is hereby agreed that:

(1) Such power and energy required for project purposes of the District, including drainage pumping, shall be delivered by the Parker-Davis Project of the United States at nominal delivery voltages of 34,500 volts and/or 4,000 volts at the Gila Substation of the United States, hereinafter designated as "the delivery point";

(2) The cost of operation and maintenance by the United States of any electric facilities which have been installed as of the date of this contract to distribute such power and energy from said delivery point to the points of use shall be reimbursed to the United States under Articles 11(b)(1) and 12 of this contract as a part of operation and maintenance costs of the United States referred to in said articles for works utilized by the United States for the benefit of the

District;

(iii) Any additional facilities constructed by the United States after the date of this contract to distribute such power and energy from said delivery point shall only be for drainage purposes and shall be constructed with funds which may be appropriated for the Gila Project for that purpose and the cost thereof shall be reimbursed by the District as provided for in Articles 7(b) and 11(a) hereof; provided, that the cost of operation and maintenance by the United States of such works shall be reimbursed to the United States under Articles 11(b)(1) and 12 of this contract as a part of the operation and maintenance costs of the United States referred to in said articles for works utilized by the United States for the benefit of the District;

(iv) For billing purposes the amounts of power and energy delivered for the District shall be measured at the Gila Substation and shall be decreased by three percent (3%) to compensate for transmission and other losses; provided, however, that no decrease shall be made in the amounts of power and energy delivered for

the operation and maintenance of the Yuma Mesa Pumping Plant, and provided, further, that such power and energy shall be measured at said Pumping Plant;

(v) During such time as the United States operates and maintains the works utilized for the benefit of the District, the cost of power and energy furnished by the United States for the benefit of the District shall be reimbursed to the United States as part of the operation and maintenance costs of the United States referred to in Articles 11(b)(1) and 12(a) of this contract. Upon the transfer to the District pursuant to Article 8(a) hereof of operation and maintenance of any of the works referred to therein, the cost of power and energy furnished the District pursuant hereto shall not be reimbursed to the United States pursuant to Articles 11(b)(1) and 12(a) hereof, but the District shall pay the United States monthly for the amounts of power and energy delivered to it pursuant to this contract and adjusted for losses as set out herein. The rate of 2.5 mills per kilowatt-hour for pumping service and 5 mills per kilowatthour for other project purposes shall be charged for the said power and energy, provided, however, that the

cost of power and energy used by the United States in the operation and maintenance of works utilized for the benefit of the District and which have not been transferred to it shall be reimbursed to the United States as part of the operation and maintenance costs of the United States referred to in Articles 11(b)(i) and 12(a) of this contract, and provided, further, that such rates may be adjusted in the manner set forth in this subdivision. The United States will submit bills to the District on or before the tenth day of each month for energy furnished hereunder during the preceding month. Bills shall be due and payable by the District on the tenth day of the month immediately succeeding the date each bill is submitted. Articles 14 and 21 hereof and all other portions of this contract shall be applicable to all bills or any part thereof which are unpaid;

(vi) The aforesaid power and energy, unless otherwise specified, will be furnished continuously except (1) for interruptions or reductions due to uncontrollable forces, as defined herein; (2) for interruptions or reductions due to operation of devices installed for power system protection; and (3) for temporary interruptions or reductions, which, in the opinion of the Regional

Director, are necessary or desirable for the purposes of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. The U. S. States, except in case of emergency as determined by the Regional Director, will give the District reasonable advance notice of such temporary interruptions or reductions and will remove the cause thereof with diligence; and

(vii) Neither party shall be considered to be in default in respect to any obligation for delivery of power and energy if prevented from fulfilling such obligation by reason of uncontrollable forces, the term uncontrollable forces being deemed for the purpose of this contract to mean any cause beyond the control of the party affected, including but not limited to, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.



(c) In the event of the disposition of the Gila Substation to third parties, the District shall have the right to require that the pump control mechanisms shall be located without expense to the District upon other suitable property mutually acceptable to the District and the United States; provided, however, that the District's right under this paragraph shall be exercised by written notice to the Secretary within 12 months after enactment of legislation authorizing such disposition. The District shall not be liable for any cost of system adaptations or connections consequent to disposition by the United States of the facilities.

Accumulation and Use of Reserve Fund

13. (a) Beginning in the calendar year 1958 and continuing thereafter until such time as all sums of money becoming due hereunder shall have been paid to the United States, the District shall accumulate and maintain, in the manner hereinafter provided, a reserve fund which shall be available for the purposes and in the circumstances hereinafter mentioned.

(b) Said reserve fund shall be accumulated by the District in yearly increments of Ten Thousand Dollars (\$10,000) until the reserve fund thus accumulated shall total One Hundred Thousand Dollars (\$100,000), which total sum shall be maintained at all times; provided, however, that Ten Thousand Dollars (\$10,000) shall constitute the maximum amount which the District shall be required to add to said reserve fund in any one calendar year.

(c) Except in case of emergency, expenditures shall be made from said reserve fund only with the advance approval of the Secretary and only for the purposes of meeting major, unforeseen costs of operation and maintenance, repair, betterment and replacement of works constructed by the United States or the District.

(d) Said reserve fund shall be deposited and maintained, apart from other District funds, in a depository meeting the requirements of the laws of Arizona relative to deposits of State and county moneys and upon conditions concerning its withdrawal which are satisfactory to the Secretary.

(e) During such time or times as the operation and maintenance of works constructed hereunder shall have been resumed by the United States in accordance with the provisions of Article 8(b) hereof, said reserve fund shall be available for use by the United States for the same purposes as said reserve funds was theretofore available for use by the District, and shall be paid to the United States at such times and in such amounts as required by the Secretary.

#### Refusal of Water in Case of Default

14. The United States reserves the right to refuse to deliver water to the District hereunder in the event of default for a period of more than twelve (12) months in any payment due the United States under this contract, or, in the discretion of the Secretary, to reduce deliveries in such proportion as the amount in default by the District bears to the total amount due. No water shall be delivered to or for

any tract of land in the District during any time that the owners or holders thereof are delinquent in the payment of any taxes or assessments heretofore or hereafter levied by the District or any toll or other charges which the District may be authorized to make.

Title to Remain in the United States

15. Title to the works heretofore or hereafter constructed or acquired by the United States shall be and remain in the United States until otherwise provided by the Congress, notwithstanding transfer of the care, operation and maintenance of any of said works to the District.

Rules and Regulations

16. There is reserved to the Secretary the right to prescribe and enforce rules and regulations not inconsistent with this contract governing the care, operation and maintenance of the works to be constructed hereunder. Such rules and regulations may be modified, revised and/or extended from time to time, after notice to the District and opportunity for it to present its views, as may be deemed proper, necessary or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments thereof, or to protect the interests of the United States. The District hereby agrees that in the care, operation and maintenance of the works to be constructed hereunder, all such rules and regulations will be fully adhered to.

Inspection by the United States

17. The Secretary may cause to be made from time to time reasonable inspections of any of the works heretofore constructed by the United States or hereafter constructed by the United States hereunder to the end

that he may ascertain whether the terms of this contract are being satisfactorily executed by the District. The estimated cost of any such inspections shall be included in computing the annual operation and maintenance costs payable by the District to the United States pursuant to Articles 11(b)(1) or 12 hereof. The Secretary shall at all times have the right of ingress to and egress from all works, lands and rights of way of the District and its landowners for the purpose of inspection, repairs and maintenance of works of the United States, and for all other purposes.

#### Access to Books and Records

18. Subject to applicable Federal laws and regulations, the proper officers or agents of the District shall have full and free access at all reasonable times to the books and records of the United States, as far as they relate to the matters covered by this contract, with the right at any time during office hours to make copies of or from the same; and the Secretary shall have the same right in respect to the books and records of the District.

#### Development and Compilation of Data and Keeping of Books, Records and Reports

19. The District shall with reasonable accuracy maintain a modern set of books of account, in form acceptable to the Secretary, showing all the financial transactions of the District and keep such other records and make such reports as the Secretary may require and in the manner and form he may require. The District shall make full and complete annual

written reports to the United States, on forms to be approved and furnished by the Secretary, covering all water delivered hereunder to the lands of the District, the disposition of such water, and the nature, extent and total estimated value of each kind of crop produced on the total acreage of the District during each calendar year as follows: on November 1, preliminary crop reports covering the calendar year ending December 31 next following and containing final figures insofar as possible; on January 15, final crop reports covering the calendar year ending December 31 next preceding; and on February 1, reports covering all water delivered hereunder to the lands of the District and the disposition of such water during the calendar year ending December 31 next preceding as hereinafter provided. During any period when the District is operating and maintaining any works pursuant to Article 8 hereof, it shall in such manner as the Secretary may require, measure and keep complete records, in form satisfactory to the Secretary, of the quantities of water delivered to the District, recovered from drain and waste ditches, delivered to each water user in the District, returned to the Colorado River System in measurable quantities, and other receipts or deliveries of water. The District shall also maintain existing groundwater measurement wells, install such additional wells for groundwater measurement as the Secretary may from time to time require, and make and keep records of monthly observations at all existing and future wells. The District shall furnish such financial reports and statements of its operation and condition as may be

inspected from time to time by the Secretary. The records and data from which any reports or statements are made shall be accessible to the United States on demand by the Secretary and the District shall cooperate to the fullest extent in facilitating any investigation by the United States of the facts shown in such records or data. In the event of the failure of the District, as determined by the Regional Director, fully to perform and comply with the requirements of this article, or in the event of the delivery to the United States by the District of a written request that the United States perform all or any part of the work in this article agreed to be performed by the District, the United States may, at the District's cost and expense, perform so much of the work herein agreed to be performed by the District as the Regional Director deems necessary or advisable; in either event, the actual cost of any work so performed by the United States shall be included in computing the annual operation and maintenance costs payable by the District to the United States pursuant to Article 12 hereof. The actual cost of any work performed by the United States in connection with the crop and water reports mentioned in the second sentence of this article shall, in any event, be included in computing said annual operation and maintenance costs.

#### Disputes or Disagreements

20. Disputes or disagreements as to the interpretation or performance of the provisions of this contract, except as otherwise provided herein, shall be determined either by arbitration or court proceedings, the

Secretary being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to submit the matter to arbitration, the District shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within thirty (30) days after their first meeting, such arbitrators not so elected shall be named by the Presiding Judge of the Phoenix Division of the United States District Court for Arizona. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Interest on Charges Due from District

21. No interest shall be charged on any charges due from the District hereunder, except that on all such charges or any part thereof which remain unpaid by the District to the United States after the same become due, an interest charge of one-half of one percentum ( $\frac{1}{2}\%$ ) of the amount unpaid shall be added thereto, and thereafter an additional interest charge of one-half of one percentum ( $\frac{1}{2}\%$ ) on the principal sum unpaid shall be added on the first day of each succeeding calendar month until the amount due, including such interest, is paid in full.

Public Lands

22. (a) Those public lands of the United States located within the District, and described on the list hereto attached, marked Exhibit "D", and by this reference made a part hereof, are hereby



designated as subject to all the provisions of the act entitled, "An act to promote the reclamation of arid lands", approved August 11, 1916 (39 Stat. 506), as amended May 15, 1922 (42 Stat. 541); provided, however, that unentered public land, while in that status, shall not be assessed by the District for any purpose, and, provided further, that if said public lands are disposed of by the United States by contract of sale, they shall be, after disposition by the United States by said contract of sale and during the time such contract shall remain in effect, subject to (i) the provisions of the laws of the State or Arizona relating to the organization, government, and regulation of irrigation, electrical, power, and other similar districts, and (ii) legal assessment or taxation by any such district and by said State or political subdivision thereof, and to liens for such assessments and taxes and to all proceedings for the enforcement thereof, in the same manner and to the same extent as privately owned lands; provided, however, that the United States does not assume any obligation for amounts so assessed or taxed, and provided further, that any proceedings to enforce said assessments or taxes shall be subject to any title then remaining in the United States, to any prior lien reserved to the United States for unpaid installments under said land-sale contracts, and to any obligation for any other charges, accrued or unaccrued, for special improvements, construction or operation and maintenance costs of said project.

(b) The lands described on Exhibit "B", attached hereto and by this reference made a part hereof, have had distribution facilities constructed therefor, although not previously listed in prior public notices declaring the availability of water.

(c) The lands described in Exhibit "C", attached hereto and by this reference made a part hereof, are public unentered lands of the United States situate within the District and under reclamation withdrawal. In the event the Secretary determines that said lands should be disposed of under the reclamation laws or that any of them are no longer required to be under reclamation withdrawal, he will consult with the District prior to disposal thereof or taking action to remove said lands from said withdrawal.

#### Application of Reclamation Law

23. Except as provided in the Boulder Canyon Project Act, the Reclamation Law shall govern the construction, operation and maintenance of the works heretofore constructed by the United States or hereafter constructed by the United States hereunder.

#### Lands Not to Receive Water Until Owners Thereof Execute Certain Contracts

24. No water shall be delivered to any excess lands as defined in Article 26 hereof unless the owners thereof shall have executed valid recordable contracts in form satisfactory to the Secretary, agreeing to the provisions of this article and Articles 25 and 26 hereof, agreeing to the appraisal provided for in Article 25 hereof and that such appraisal shall be made on the basis of the actual bona

fair value of such lands at the date of the appraisal without reference to the construction of the project, all as hereinafter provided, and agreeing to the sale of such lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed, as hereinafter provided. Until one-half of the construction charges allocated against such lands have been fully paid, no sale of any excess lands shall carry the right to receive water hereunder, unless and until the purchase price involved in such sale is approved by the Secretary and upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary may instruct the District by written notice to refuse to deliver any water subject to this contract to the land involved in such fraudulent sales and the District thereafter shall not deliver to such lands.

#### Valuation and Sale of Excess Lands

25. (a) The value of the excess irrigable lands within the District as defined in Article 16, held in private ownership of large landowners as defined in said article, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the District and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the District are unable to agree upon the appointment of the third, the Presiding Judge of the Phoenix Division of the United States District Court for Arizona shall be requested to name the third appraiser.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such lands on account of the existing or prospective possibility of securing water from the project.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The excess land of any large landowner shall be reappraised at the instance of the United States or at the request of said landowner. The cost of the first appraisal and each subsequent appraisal requested by the United States shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large landowner may be appraised in like manner.

(e) Future sales of excess irrigable lands of large landowners within the District shall not carry the right to receive water hereunder for such land and the District agrees to refuse to deliver water to land so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the District.

(f) The District agrees to take all reasonable steps requested by the Secretary to ascertain the occurrence and conditions of all sales of irrigable lands of large landowners in the District and to inform the Secretary or his authorized representative in charge of the project concerning the same.

(g) A true copy of this contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the District and like copies in the office of the Regional Director, United States Bureau of Reclamation, Boulder City, Nevada, and shall be made available for examination during the usual office hours by all persons who may be interested therein.

Excess Lands

25. (a) As used herein the term "excess land" means that part of the irrigable land within the District in excess of 160 acres held in the beneficial ownership of any single person; or in excess of 320 acres held in the beneficial ownership of husband and wife jointly, as tenants in common or by the entirety, or as community property; the term "large landowner" means an owner of excess lands; the term "non-excess land" means all land within the District which is not excess land as defined herein; and the term "irrigable lands within the District" means those lands now or hereafter within the District which, in the determination of the Secretary, are irrigable and susceptible of service with water delivered hereunder.

(b) Each large landowner as a further condition precedent to the right to receive water delivered hereunder for any of his excess lands shall:

(i) Prior to the expiration of twelve (12) months from the date of this contract as provided in Article 1 and before any water is delivered hereunder to his excess land, execute a valid recordable contract in form satisfactory to the Secretary, agreeing to the provisions contained in this article and in Articles 24

and 25 hereof and agreeing to dispose of his excess lands in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such excess land and within a period of ten (10) years after the date of the execution of said recordable contract and agreeing further that if said land is not so disposed of within said period of ten (10) years the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large landowner; and the District agrees that it will refuse to deliver water to any large landowner other than for his nonexcess lands until such owner meets the conditions precedent herein stated.

(ii) Within thirty (30) days after the date of notice from the United States requesting such large landowner to designate his lands within the District which he desires to designate as nonexcess lands, file in the office of the District, in duplicate, one copy thereof to be furnished by the District to the Regional Director, his written designation and description of lands so selected to be nonexcess lands and upon failure to do so the District shall

make such designation and mail a notice thereof to such large landowner, and in the event the District fails to act within such period of time as the Secretary considers reasonable, such designation will be made by the Secretary who will mail a notice thereof to the District and the large landowner. The large landowner shall become bound by any such action on the part of the District or the Secretary and the District will deliver water only to the irrigable land so designated to be nonexcess land. A large landowner may with the consent of the Regional Director designate land other than that previously designated as nonexcess land; provided, that such redesignation may be made only to the extent that an equal acreage of the irrigable land initially designated as nonexcess and owned by such large landowner shall, upon such new designation, become excess land subject to the provisions of this article and of Articles 24 and 25 hereof and be described in a recordable contract executed by the large landowner in the same manner as if such land had been included as excess land in a recordable contract at the time of initial designation.

Amendment of Federal Reclamation Laws

27. In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal Reclamation Laws,



Articles 24, 25 and 26 of this contract will no longer be of any force or effect, and, in the event that the Congress amends the excess-land provisions or other provisions of the Federal Reclamation Laws, the United States agrees, at the option of the District, to negotiate amendments of appropriate articles of this contract, all consistently with the provisions of such repeal or amendment.

Contingent Upon Appropriations  
or Allotments of Funds

28. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress so to appropriate funds or the failure of an allotment of funds shall not relieve the District from any obligations under this contract and no liability shall accrue against the United States, its officers, agents, employees, successors or assigns, in case such funds are not appropriated or allotted.

Contract to be Authorized by  
Election and Confirmed by Court

29. The execution of this contract by the District shall be authorized by the qualified electors of the District at an election held for that purpose. Thereafter, without delay, the District shall prosecute to final judgment proceedings in the Superior Court for Yuma County, State of Arizona, and in all appellate courts for a judicial confirmation of the authorization and validity of this contract. The United States shall not be in any manner bound under the terms and conditions

of this contract unless and until a confirmatory final judgment in such proceedings shall have been rendered, including final decision, or pending appellate action if ground for appeal be laid. The District shall, without delay and at its own cost and expense, record this contract in the office of the County Recorder of Yuma County, Arizona, and shall furnish the United States for its files copies of all proceedings relating to the election upon this contract and the confirmation proceedings in connection therewith, which said copies shall be properly certified by the clerk of the court in which confirmatory judgment is obtained.

#### Notices

30. (a) Any notice, demand or request required or authorized by this contract to be given or made to or upon the United States shall be delivered, or mailed postage prepaid, to the Regional Director, United States Bureau of Reclamation, Boulder City, Nevada.

(b) Any notice, demand or request required or authorized by this contract to be given or made to or upon the District shall be delivered, or mailed postage prepaid, to Secretary, Yuma Mesa Irrigation and Drainage District, Yuma, Arizona.

(c) The designation of any person specified in this article, or the address of any such person, may be changed at any time by notice given in the same manner as provided in this article for other notices.

#### Rights Reserved Under Section 3737, Revised Statutes

31. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Remedies Under Contract Not Exclusive

32. Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States or the District of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any provision hereof, or of any other or subsequent breach of any provision hereof.

Interest in Contract Not Transferable

33. No interest in this contract is transferable by the District to any other party, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States.

Priority of Claims of the United States

34. Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

Officials Not to Benefit

35. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom; but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Representatives and Successors of  
Secretary and Bureau Officers

36. The terms "Secretary", "Regional Director", and "Project Manager", as used in this contract, shall include their respective duly appointed

successors and authorized representatives.

Secretary to Approve Contracts

37. No contract made by the District affecting the works heretofore constructed by the United States or hereafter constructed by the United States hereunder, except contracts for the usual labor, equipment, supplies and services in connection with the operation and maintenance by the District of the said works, or relating to the delivery or distribution of water shall be valid until approved by the Secretary. A draft of every such contract shall be submitted to the Secretary for approval as to form before execution.

Changes in Organization of District

38. While this contract is in effect no change shall be made in the District, either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the Secretary's written assent thereto; the Secretary may, in his discretion, withhold such assent or grant the same subject to the performance of such conditions and/or the occurrence of such events as he may deem necessary or desirable for the best interests of the United States.

Discrimination Against Employees or Applicants for Employment Prohibited

39. In connection with the performance of work under this contract, the District agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The District agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause. The District further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

Statement of Objectives as to  
Soil and Water Conservation

40. In the execution of this contract, the District and the United States acknowledge the desirability and the necessity of the adoption on District lands of proper soil and water conservation practices to protect the lands in the District against deterioration, to permit the economical use of water, and to secure maximum crop yields. The Secretary and the District will cooperate to encourage, through the aid and assistance of Federal and State agencies, the attainment of these objectives.

IN WITNESS WHEREOF, the parties hereto have caused this  
contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,

By Frederic S. Randall  
Assistant Secretary of the Interior

Attest:

Ernest H. Miller  
Secretary

YUMA MESA IRRIGATION AND DRAINAGE  
DISTRICT,

By Wm. R. Lamborn  
President

DISTRICT OF COLUMBIA, ss:

On this 5TH day of JUNE, in the year 1956, before me, Harold L. Eyed, a Notary Public in and for the District of Columbia, duly commissioned and sworn, personally appeared FRED B. AARDAHL <sup>ASST.</sup> Secretary of the Interior, known to me to be the person and officer whose name is subscribed to the foregoing contract, dated MAY 26, 1956, on behalf of The United States of America, and acknowledged that he executed the same on behalf of The United States of America.

Witness my hand and official seal.

Harold L. Eyed  
Notary Public in and for the  
District of Columbia

My Commission Expires MAY 14, 1957

Serial A 50590 DISTRICT OF COLUMBIA

To ALL WHOM THESE PRESENTS SHALL COME, GREETING:

I CERTIFY THAT HAROLD L. EYED whose name is subscribed to the accompanying instrument, was at the time of signing the same a Notary Public in and for the District of Columbia, and duly commissioned and authorized by the laws of said District of Columbia to take the acknowledgment and proof of deed or conveyance of lands, tenements, or hereditaments, and other instruments in writing to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature and impression of seal thereon are genuine, after comparison with signature and impression of seal on file in this office.

IN WITNESS WHEREOF, the Secretary to the Board of Commissioners of the District of Columbia, has hereunto caused the Seal of the District of Columbia to be affixed at the City of Washington, D. C., this

6th day of JUNE, 1956

(D. C. SEAL)

Harold L. Eyed  
CHIEF, NOTARY PUBLIC SECTION

Secretary, Board of Commissioners



ACKNOWLEDGMENT

STATE OF ARIZONA }  
COUNTY OF YUMA } SS.

On this the 24th day of May, 1956,  
before me, James A. Schiano, the undersigned officer,  
personally appeared: Robert L. Miller and  
John A. Schiano, of the County of Yuma, Arizona,  
known to me to be the persons described in the foregoing instrument,  
and acknowledged that they executed the same in the capacity therein  
stated and for the purposes therein contained.

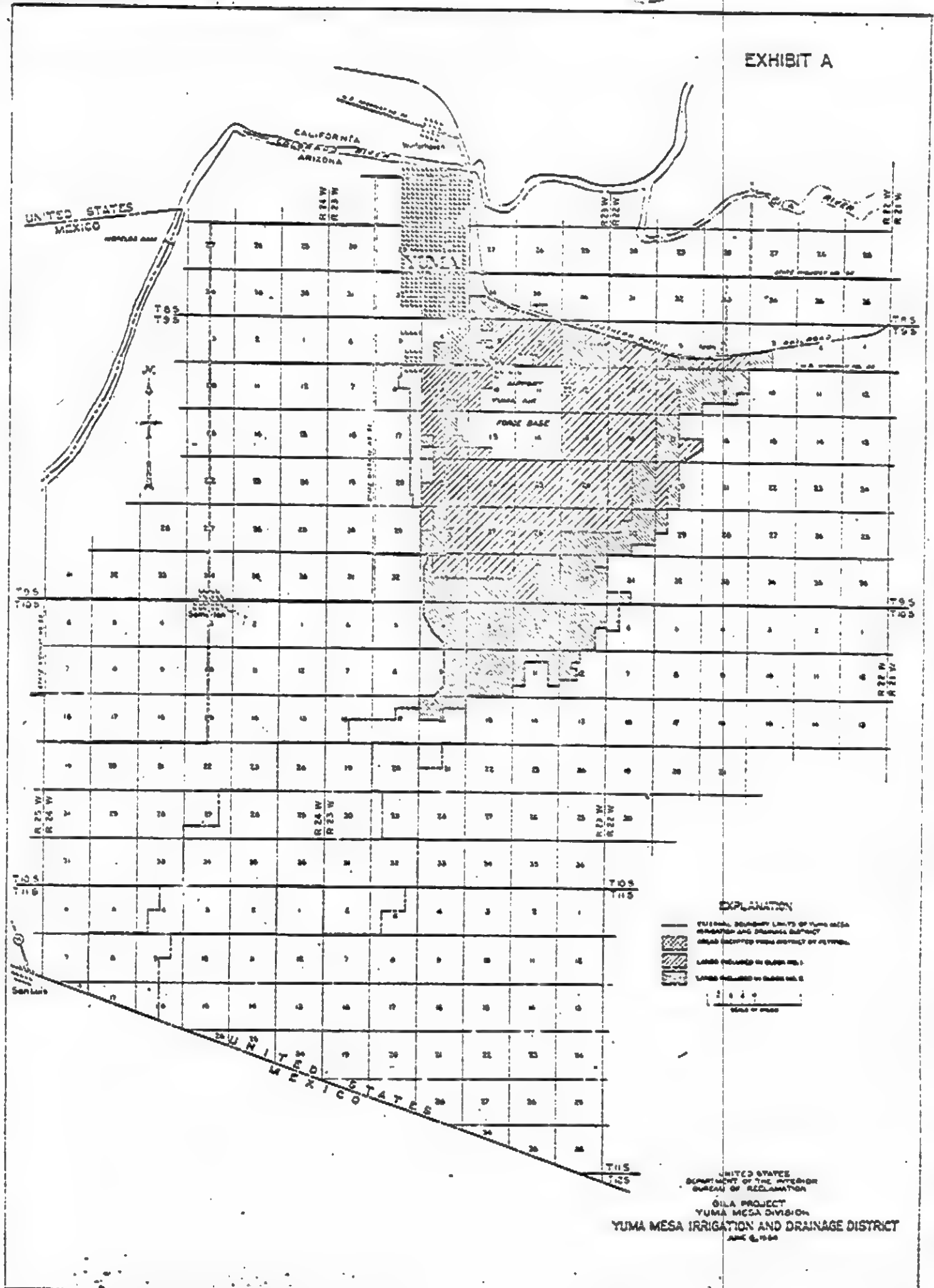
In Witness Whereof I hereunto set my hand and official  
seal.

James A. Schiano  
Notary Public

My Commission Expires:

Sept 29 1959

# EXHIBIT A



LIST OF LANDS AND LAND CLASSES IN THE DISTRICTBLOCK 1

*Description		Class 2	Class 3	Total Irrigable
<u>Township 8 South, Range 23 West</u>				
Section 34	SW-SE	36.7	---	36.7
	SE-SE	35.4	---	35.4
Section 35	SW-SW	28.4	---	28.4
	SE-SW	9.0	---	9.0
<u>Township 9 South, Range 22 West</u>				
Section 4	NE-SW	10.4	---	10.4
	NW-SW	7.8	---	7.8
	SW-SW	34.0	---	34.0
	SE-SW	33.0	---	33.0
	NE-SE	22.8	---	22.8
	NW-SE	19.0	---	19.0
	SW-SE	33.0	---	33.0
	SE-SE	27.3	5.0	32.3
Section 5	NW-SW	17.0	---	17.0
	SW-SW	31.7	---	31.7
	NE-SE	3.8	---	3.8
	NW-SE	3.8	---	3.8
	SW-SE	33.5	---	33.5
	SE-SE	32.1	---	32.1
<u>Township 9 South, Range 22 West</u>				
Section 6	Lot 9	13.7	---	13.7
	Lot 11	17.2	---	17.2
	NE-SW	40.0	---	40.0
	SE-SW	33.7	---	33.7
	S $\frac{1}{2}$ -NE-SE	19.4	---	19.4
	NW-NW-SE & S $\frac{1}{2}$ -NW-SE	29.8	---	29.8
	SW-SE	32.7	---	32.7
	SE-SE	32.2	---	32.2
Section 7	Lot 1	36.3	---	36.3
	Lot 2	39.2	---	39.2
	Lot 3	39.3	---	39.3
	Lot 4	38.3	---	38.3
	NE-NE	35.1	---	35.1
	NW-NE	36.1	---	36.1
	SW-NE	39.0	---	39.0

\* The subdivision designations herein are listed only for location purposes or as a means of ready identification.

	SE-NE	38.0	---	38.0
	NE-NW	37.0	---	37.0
	SE-NW	40.0	---	40.0
	NE-SW	40.0	---	40.0
	SE-SW	38.9	---	38.9
	NE-SE	36.5	---	36.5
	NW-SE	38.9	---	38.9
	SW-SE	37.9	---	37.9
	SE-SE	37.5	---	37.5
Section 8	SW-NW	38.6	---	38.6
	SE-NW	38.0	---	38.0
	NE-SW	29.3	9.3	38.6
	NW-SW	38.7	---	38.7
	SW-SW	37.8	---	37.8
	SE-SW	17.2	21.5	38.7
Section 17	NE-SE	---	17.3	17.3
	NW-SE	---	15.2	15.2
	SW-SE	---	12.8	12.8
	SE-SE	---	0.7	0.7
Section 18	Lot 1	36.4	---	36.4
	Lot 2	38.0	---	38.0
	Lot 3	36.8	---	36.8
	Lot 4	36.8	---	36.8
	NE-NE	38.0	---	38.0
	NW-NE	37.0	---	37.0
	SW-NE	38.9	---	38.9
	SE-NE	38.0	---	38.0
	NE-NW	37.1	---	37.1
	SE-NW	38.3	---	38.3
	NE-SW	37.9	---	37.9
	SE-SW	30.1	7.7	37.8
	NE-SE	37.9	---	37.9
	NW-SE	38.9	---	38.9
	SW-SE	20.7	18.2	38.9
	SE-SE	32.0	6.0	38.0
Section 19	Lot 1	37.6	---	37.6
	Lot 4	31.2	6.4	37.6
	Lot 5	19.3	---	19.3
	Lot 6	19.2	---	19.2
	Lot 7	19.3	---	19.3
	Lot 8	5.7	13.5	19.2
	NE-NW	29.2	9.5	38.7
	SE-NW	39.8	---	39.8
	NE-SW	37.7	1.5	39.2
	SE-SW	28.3	6.0	34.3
Section 20	NE-NW	32.5	1.7	34.2
	NW-NW	13.8	25.4	37.2
	SW-NW	31.2	3.9	35.1
	SE-NW	37.2	2.7	39.9
	NW-SW	19.7	19.3	39.0

Section 30	SW-SW	20.3	17.8	38.1
	NE-NW	35.6	---	35.6
	NW-NW	38.5	0.3	33.8
	SW-NW	23.9	4.9	33.8

Township 9 South, Range 23 West

Section 1	Lot 7	0.1	---	0.1
	Lot 10	7.2	---	7.2
	Lot 21	33.8	---	33.8
Section 2	SW-NE	40.2	---	40.2
	Lot 1	33.5	---	33.5
	Lot 2	23.4	13.5	36.9
	Lot 3	25.7	14.3	40.0
	Lot 4	35.7	4.0	39.7
	SW-NE	39.0	---	39.8
	SE-NE	39.3	---	39.3
	SW-NW	24.3	15.2	39.5
	SE-NW	16.6	23.0	39.6
	NE-SW	22.6	17.2	39.8
	NW-SW	16.9	22.6	39.5
	NE-SE	39.4	---	39.4
	NW-SE	39.8	---	39.8
	SW-SE	35.3	---	35.3
	SE-SE	36.4	---	36.4
	Lot 1	18.6	16.4	37.2
	Lot 2	27.6	11.2	38.8
	SW-NE	4.6	34.7	39.5
	SE-NE	10.0	28.0	38.0
Section 3	NE-SE	23.2	16.2	39.4
	NW-SE	27.0	23.4	40.4
	SW-SE	16.7	18.8	35.5
	SE-SE	16.0	18.4	36.4
	NE-NE	10.6	23.2	34.0
Section 9	NW-NE	9.6	25.4	35.2
	SW-NE	34.9	1.1	36.0
	SE-NE	35.8	0.1	35.9
	NE-NW	0.6	35.4	35.0
	NW-NW	---	30.0	30.0
	SW-NW	23.1	17.0	40.1
	SE-NW	34.3	3.9	38.2
	NE-SW	29.2	9.0	38.2
	NW-SW	37.4	2.7	40.1
	SW-SW	31.4	6.7	38.1
	SE-SW	7.7	31.4	39.1
	NE-SE	20.9	15.6	36.5
	NW-SE	2.0	36.0	38.0
	SE-SE	13.0	24.2	37.2

Section 10	NE-NW	24.1	12.1	36.2
	NW-NW	21.2	14.0	35.2
	SW-NW	14.8	23.1	37.9
	SE-NW	20.2	19.8	40.0
	NE-SW	29.7	8.5	38.2
	SW-SW	25.6	12.5	38.1
Section 12	Lot 1	8.5	---	8.5
	NE-NE	32.6	---	32.6
	NW-NE	35.3	---	35.3
	SW-NE	40.2	---	40.2
	SE-NE	36.3	---	36.3
	NE-NW	34.0	---	34.0
	NW-NW	30.9	---	30.9
	NE-SW-NW & E $\frac{1}{2}$ -SE-SW-NW	14.5	---	14.5
	SE-NW	40.2	---	40.2
	NE-SW	40.2	---	40.2
	NW-SW	24.6	---	24.6
	SW-SW	38.2	---	38.2
	SE-SW	39.1	---	39.1
	NE-SE	36.2	---	36.2
	NW-SE	40.2	---	40.2
	SW-SE	38.9	---	38.9
	SE-SE	35.1	---	35.1
Section 13	Lot 1	17.3	---	17.3
	Lot 2	15.6	---	15.6
	Lot 3	18.1	---	18.1
	Lot 4	17.6	---	17.6
	Lot 5	19.0	---	19.0
	Lot 6	17.3	---	17.3
	Lot 7	17.5	---	17.5
	Lot 8	17.9	---	17.9
	NW-NE	37.4	---	37.4
	SE-NE	38.2	---	38.2
	NE-NW	39.2	---	39.2
	NW-NW	38.3	---	38.3
	SW-NW	38.4	---	38.4
	SE-NW	39.4	---	39.4
	NW-SW	38.5	---	38.5
	SE-SW	39.5	---	39.5
	NE-SE	38.4	---	38.4
	NW-SE	39.5	---	39.5
	SW-SE	39.6	---	39.6
	SE-SE	38.6	---	38.6
Section 15	SW-SW	22.0	14.3	36.3
	SE-SW	5.1	32.2	37.3
Section 16	NE-NW	22.9	15.3	38.2
	NW-NW	32.8	6.4	39.2
	SW-NW	15.7	4.4	20.1
	SE-NW	23.9	14.4	38.3
	NE-SW	32.4	1.4	33.8

Section 21	NW-SE	0.3	27.6	28.4
	SW-SE	13.3	6.9	20.2
	SE-SE	22.4	---	22.4
	NE-NE	33.9	---	36.9
	NW-NE	37.3	---	37.3
	SW-NE	38.9	---	38.9
	SE-NE	38.6	---	38.8
	NE-NW	25.2	22.8	38.0
	SE-NW	30.0	1.0	39.0
	NE-SW	39.0	---	39.0
	NW-SW	32.5	6.5	39.0
	SW-SW	38.0	---	38.0
	SE-SW	38.0	---	38.0
	NE-SE	36.6	---	36.6
	NW-SE	38.0	---	38.0
	SW-SE	37.0	---	37.0
Section 22	SE-SE	36.9	---	36.9
	NE-NE	38.1	---	38.1
	NW-NE	39.1	---	39.1
	SW-NE	39.2	---	39.2
	SE-NE	38.3	---	38.3
	NE-NW	39.0	---	39.0
	SW-NW	38.0	---	38.0
	SE-NW	38.2	---	38.2
	NE-SW	39.2	---	39.2
	NW-SW	39.3	---	39.3
	SW-SW	38.3	---	38.3
	SE-SW	28.4	---	38.4
	NE-SE	39.5	---	39.5
	NW-SE	38.4	---	38.4
	SW-SE	39.4	---	39.4
	SE-SE	38.3	---	38.3
Section 23	NE-NE	38.5	---	38.5
	NW-NE	37.0	---	37.0
	SW-NE	29.5	---	39.5
	SE-NE	40.5	---	40.5
	NE-NW	37.1	---	37.1
	SW-NW	38.4	---	38.4
	SE-NW	37.4	---	37.4
	NE-SW	37.3	---	37.3
	NW-SW	39.4	---	39.4
	SW-SW	40.4	---	40.4
	SE-SW	38.2	---	38.2
	NE-SE	38.2	---	38.2
	NW-SE	39.3	---	39.3
	SW-SE	38.6	---	38.6
	SE-SE	40.4	---	40.4
		39.3	---	39.3
		38.4	---	38.4



Section 24	Lot 1	18.6	---	18.8
	Lot 2	18.9	---	18.9
	NE-NE	36.6	---	36.6
	NW-NE	36.4	---	36.4
	SE-NE	39.3	---	39.3
	NE-NW	37.5	---	37.5
	NW-NW	36.7	---	36.7
	SW-NW	36.4	3.1	39.5
	SE-NW	26.3	13.7	40.5
	NE-SW	30.4	10.0	40.4
	NW-SW	38.2	1.2	39.4
	SW-SW	38.3	---	38.3
	SE-SW	32.6	6.7	39.3
	NE-SE	36.4	3.0	39.4
	NW-SE	30.2	10.0	40.2
	SW-SE	10.6	28.6	39.2
	SE-SE	27.9	10.3	38.2
Section 25	NE-NE	33.8	4.6	38.4
	NW-NE	37.6	1.7	39.3
	SW-NE	36.1	---	36.1
	SE-NE	13.3	24.2	37.5
	NE-NW	24.7	14.6	39.3
	NW-NW	25.7	12.5	38.2
	SW-NW	36.8	0.8	37.6
	SE-NW	35.0	3.6	38.6
Section 26	NE-NE	38.3	---	38.3
	NW-NE	39.2	---	39.2
	SW-NE	38.5	---	38.5
	SE-NE	37.5	---	37.5
	NE-NW	38.4	---	38.4
	NW-NW	37.3	---	37.3
	SW-NW	36.7	---	36.7
	SE-NW	37.7	---	37.7
	NE-SW	25.2	12.2	37.4
	NW-SW	35.5	1.0	36.5
	SW-SW	21.4	13.8	35.2
	SE-SW	24.7	13.2	37.9
	NE-SE	37.1	---	37.1
	NW-SE	36.5	1.3	37.8
	SW-SE	16.0	22.2	38.2
	SE-SE	23.8	13.7	37.5
Section 27	NE-NE	37.7	---	37.7
	NW-NE	37.7	---	37.7
	SW-NE	37.3	---	37.3
	SE-NE	37.2	---	37.2
	NE-NW	39.5	---	39.5
	NW-NW	38.4	---	38.4
	SW-NW	38.1	---	38.1
	SE-NW	39.1	---	39.1
	NE-SW	36.5	2.8	39.3
	NW-SW	38.0	---	38.0

	SW-SW	17.3	19.4	36.7
	SE-SW	4.0	33.6	37.6
	NE-SE	38.1	---	38.1
	NW-SE	37.4	0.7	38.1
	SW-SE	20.2	17.4	37.6
	SE-SE	26.3	10.5	36.8
Section 28	Lot 1	31.0	---	31.0
	NE-NE	37.9	---	37.9
	NW-NE	37.9	---	37.9
	SE-NE	36.5	---	36.5
	NW-NW	38.1	---	38.1
	SW-NW	37.5	---	37.5
	NE-SE	37.8	---	37.8
	NW-SE	37.8	---	37.8
	SW-SE	33.1	---	33.1
	SE-SE	15.1	21.3	36.4
Section 33	NE-NE	---	38.7	38.7
	NW-NE	8.0	31.7	39.7
	SW-NE	---	39.5	39.5
	SE-NE	---	38.6	38.6
	NE-NW	3.4	36.2	39.6
	SE-NW	---	40.1	40.1
Section 34	NE-NE	---	38.4	38.4
	NW-NE	---	39.5	39.5
	SW-NE	---	39.2	39.2
	SE-NE	---	38.2	38.2
	NE-NW	---	39.6	39.6
	NW-NW	---	38.8	38.8
	SW-NW	---	38.3	38.3
	SE-NW	---	39.2	39.2
Section 35	NE-NW	24.2	13.8	38.0
	NW-NW	18.2	18.9	37.1
	SW-NW	8.6	28.3	36.9
	SE-NW	2.3	35.6	37.9
	NE-SW	---	39.4	39.4
	NW-SW	---	35.5	35.5
	SW-SW	---	35.1	35.1
	SE-SW	---	39.2	39.2
TOTAL IN BLOCK 1		8,946.4	2,121.9	11,068.3

BLOCK 2

*Description		Class 2	Class 3	Total Irrigable
<u>Township 8 South, Range 23 West</u>				
Section 34	NE-SW	6.6	—	6.6
	NW-SW	6.2	7.1	13.9
	SW-SW	21.5	11.0	32.5
	SE-SW	21.3	—	21.3
<u>Township 9 South, Range 22 West</u>				
Section 3	NE-SW	22.2	15.1	37.3
	NW-SW	22.5	9.2	31.7
	SW-SW	10.0	22.1	32.1
	SE-SW	—	31.5	31.5
Section 5	NE-SW	8.5	—	8.5
	SE-SW	32.7	—	32.7
Section 6	Lot 5	22.5	—	22.5
	Lot 6	37.3	—	37.3
	Lot 7	33.0	—	33.0
Section 8	NE-NE	33.7	—	33.7
	NW-NE	36.4	—	36.4
	SW-NE	37.8	—	37.8
	SE-NE	35.4	—	35.4
	NE-NW	36.5	—	36.5
	NW-NW	35.7	—	35.7
	NE-SE	18.2	17.5	35.7
	NW-SE	25.0	13.6	38.6
	SW-SE	—	38.6	38.6
	SE-SE	1.4	34.4	35.8
	NE-NE	12.2	24.2	36.4
	NW-NE	34.9	2.4	37.3
	SW-NE	12.3	28.0	40.3
	SE-NE	29.6	8.6	38.2
Section 9	NE-NW	37.2	—	37.2
	NW-NW	36.2	—	36.2
	SW-NW	34.5	3.5	38.0
	SE-NW	20.5	19.7	40.2
	NE-SW	2.4	37.8	40.2
	NW-SW	9.8	28.6	38.4
	NW-SE	—	40.3	40.3
	NE-NW	3.6	33.9	37.5
	NW-NW	7.5	30.4	37.9
	SW-NW	17.3	21.6	38.9
	SE-NW	2.9	37.1	40.0
	NE-SW	13.3	21.3	40.1
Section 17	NE-NW	3.6	33.9	37.5
	NW-NW	7.5	30.4	37.9
	SW-NW	17.3	21.6	38.9
	SE-NW	2.9	37.1	40.0

	NW-SW	34.9	4.1	39.0
	SW-SW	18.1	20.0	38.1
	SE-SW	11.7	27.4	39.1
Section 19	NE-NE	27.6	10.1	37.7
	NW-NE	28.0	10.7	38.7
	SW-NE	39.7	---	39.7
	SE-NE	32.7	3.4	36.1
	NE-SE	24.3	12.2	36.5
	NW-SE	21.9	13.6	35.5
	SW-SE	9.2	29.4	38.6
	SE-SE	5.7	32.0	37.7
Section 20	NE-SW	15.9	24.1	40.0
	SE-SW	---	39.1	39.1
Section 29	NW-NW	---	38.5	38.5
	SW-NW	---	39.4	39.4
Section 30	Lot 3	34.9	3.7	38.6
	Lot 4	14.2	5.1	19.3
	NE-NE	21.5	15.3	36.8
	NW-NE	30.7	7.1	37.8
	SW-NE	4.7	35.5	40.2
	SE-NE	16.6	22.6	39.2
	SE-NW	19.1	19.0	38.1
	NE-SW	20.1	19.6	39.7
	SE-SW	0.8	19.4	20.2
	NE-SE	---	39.3	39.3
	NW-SE	4.7	35.6	40.3
Section 31	Lot 4	---	8.8	8.8
	SE-SW	---	21.1	21.1

Township 9 South, Range 26 West

Section 1	Lot 14	16.9	---	16.9
	Lot 18	21.6	---	21.6
	SW-NW	36.8	---	36.8
	SE-NW	38.2	---	38.2
	NE-SW	38.3	---	38.3
	NW-SW	39.3	---	39.3
	SW-SW	36.3	---	36.3
	SE-SW	37.3	---	37.3
	NE-SE	37.5	---	37.5
	NW-SE	37.1	---	37.1
	SW-SE	37.3	---	37.3
	SE-SE	32.4	---	32.4
Section 2	SE-SW	6.3	1.8	8.1
Section 3	Lot 4	8.4	30.3	38.7
	SW-NW	9.3	23.9	33.2
	SE-NW	9.7	23.7	33.4
	NE-SW	15.9	13.9	29.8
	NW-SW	28.4	10.9	39.3
	SW-SW	12.6	7.0	19.6

Section 4	SE-SW	1.6	23.6	25.2
	Lot 2	---	9.9	9.9
Section 9	SW-SE	---	38.1	38.1
	NW-NE	16.2	5.4	21.6
Section 16	SW-NE	---	25.3	25.3
	NW-SW	2.8	---	2.8
	SE-SW	6.3	0.3	6.6
	NE-SE	---	6.5	6.5
Section 25	NE-SW	3.1	35.8	38.9
	NW-SW	9.2	28.6	37.5
	SW-SW	---	38.3	38.3
	SE-SW	---	39.3	39.3
	NE-SE	3.3	4.3	8.1
	NW-SE	---	10.5	10.5
	SW-SE	---	5.2	5.2
	SE-SE	---	6.8	6.3
Section 28	Lot 2	6.7	---	6.7
	NE-NW	38.0	---	38.0
	SE-NW	37.7	---	37.7
	NE-SW	37.4	0.3	37.7
	NW-SW	23.7	6.6	35.3
	SW-SW	10.1	24.9	35.0
Section 33	SE-SW	21.9	16.3	38.2
	NW-NW	---	20.7	20.7
	SW-NW	---	28.9	28.9
	NE-SW	---	40.3	40.3
	NW-SW	---	29.0	29.0
	SW-SW	---	33.3	28.3
	SE-SW	---	39.7	39.7
	NE-SE	---	38.9	38.9
	NW-SE	---	39.9	39.9
	SW-SE	24.7	15.1	39.8
Section 34	SE-SE	10.6	25.0	38.8
	NE-SW	---	39.7	39.7
	NW-SW	---	38.9	30.9
	SW-SW	11.1	27.6	38.7
	SE-SW	3.6	36.0	39.6
	NE-SE	---	38.5	38.5
	NW-SE	---	39.6	39.6
	SW-SE	7.2	32.3	39.5
Section 35	SE-SE	1.7	36.6	38.3
	NE-NE	---	38.2	38.2
	NW-NE	---	39.2	39.2
	SW-NE	---	39.0	39.0
	SE-NE	---	39.2	39.2
	NE-SE	3.2	36.0	39.2
	NW-SE	---	39.4	39.4
	SW-SE	---	39.2	39.2
	SE-SE	8.2	30.1	38.3

## Section 36

NW-NE	---	35.3	36.3
SW-NE	---	39.4	39.4
SE-NE	---	7.6	7.6
NE-NW	---	38.7	38.7
NW-NW	---	38.3	38.3
SW-NW	---	39.3	39.3
SE-NW	---	39.9	39.9
NE-SW	0.4	40.0	40.4
NW-SW	4.0	35.3	39.3
SW-SW	36.5	1.8	38.3
SE-SW	34.7	3.3	38.0
NE-SE	---	26.3	26.8
NW-SE	---	40.4	40.4
SW-SE	2.8	35.1	37.9
SE-SE	---	33.9	33.9

Township 10 South, Range 22 West

## Section 6

Lot 4	---	47.3	47.3
Lot 5	---	41.3	41.3

Township 10 South, Range 23 West

## Section 1

Lot 1	---	35.8	36.8
Lot 2	10.0	29.2	39.2
Lot 3	30.0	0	39.0
Lot 4	31.7	6.2	37.9
SW-NE	---	19.2	19.2
SE-NE	---	20.3	20.3
SW-NW	9.1	29.9	39.0
SE-NW	---	40.1	40.1
NE-SW	24.5	15.6	40.1
NW-SW	---	39.0	39.0
SW-SW	---	37.9	37.9
SE-SW	---	39.1	39.1
NW-SE	---	40.2	40.2
SW-SE	---	39.2	39.2

## Section 2

Lot 1	18.1	19.8	37.9
Lot 2	0.2	38.7	38.9
Lot 3	---	37.3	37.3
Lot 4	7.1	29.4	36.5
SW-NE	2.1	34.2	36.3
SE-NE	29.0	9.1	38.1
SW-NW	3.6	32.5	36.1
SE-NW	---	38.4	38.4
NE-SW	---	40.2	40.2
NW-SW	1.6	37.7	39.3
SW-SW	1.4	37.0	38.4
SE-SW	---	39.2	39.2
NE-SE	---	37.8	37.8

Section 3	NW-SE	---	36.3	36.3
	SW-SE	---	39.1	39.1
	SE-SE	---	34.3	34.3
	Lot 1	33.6	0.8	34.4
	Lot 2	38.1	0.1	38.2
	Lot 3	23.5	14.7	38.2
	Lot 4	37.4	---	37.4
	SW-NE	28.2	11.5	39.7
	SE-NE	27.4	8.3	35.7
	SW-NW	22.2	16.7	38.9
	SE-NW	20.5	19.3	39.8
	NE-SW	0.3	40.3	40.6
	NW-SW	20.0	19.7	39.7
	SW-SW	1.1	37.7	38.8
	SE-SW	19.8	19.9	39.7
	NE-SE	27.7	11.9	39.6
	NW-SE	10.4	27.6	38.0
	SW-SE	20.7	16.4	37.1
	SE-SE	10.3	28.4	38.7
Section 4	Lot 1	15.9	19.7	35.6
	Lot 2	2.0	35.4	37.4
	Lot 3	---	38.5	38.5
	Lot 5	---	28.5	28.5
	Lot 8	---	19.0	19.0
	Lot 9	---	28.7	28.7
	Lot 10	---	6.0	6.0
	Lot 11	---	1.9	1.9
	Lot 15	---	4.4	4.4
	SW-NE	---	39.9	39.9
	SE-NE	---	38.6	38.6
	SE-NW	---	39.6	39.6
	NE-SE	5.2	34.4	39.6
	NW-SE	9.0	31.6	40.6
	SW-SE	7.1	31.3	38.4
	SE-SE	30.0	8.7	38.7
	NE-NE	36.0	---	36.0
	NW-NE	23.5	13.7	37.2
	SW-NE	10.6	27.5	38.1
Section 9	SE-NE	30.1	8.0	38.1
	SE-SW	0.3	16.0	16.3
	NE-SE	32.8	4.3	37.1
	NW-SE	0.1	37.4	37.5
	SW-SE	5.5	31.6	37.1
	SE-SE	8.0	30.8	38.8
	NE-NE	---	39.3	39.3
	NW-NE	3.2	36.0	39.2
	SW-NE	---	41.1	41.1
	SE-NE	---	39.3	39.3
Section 10	NE-NW	23.7	14.5	38.2



	NW-NW	25.6	11.5	37.1
	SW-NW	24.7	14.4	39.1
	SE-NW	1.0	40.0	41.0
	NE-SW	1.3	39.6	40.9
	NW-SW	29.1	10.0	39.1
	SW-SW	8.0	30.7	38.7
	SE-SW	---	39.9	39.9
	NE-SE	---	40.2	40.2
	NW-SE	---	41.1	41.1
	SW-SE	---	40.0	40.0
	SE-SE	---	39.2	39.2
Section 11	NE-NE	---	36.0	36.0
	NW-NE	---	38.2	38.2
	SE-NE	---	38.2	38.2
	NE-NW	---	37.1	37.1
	NW-NW	---	39.1	39.1
	SW-NW	---	38.2	38.2
	NW-SW	---	39.4	39.4
	NE-SE	---	39.8	39.8
Section 12	NE-NW	---	28.6	28.6
	NW-NW	---	36.9	36.9
	SW-NW	---	39.2	39.2
	SE-NW	---	10.1	10.1
	NE-SW	---	10.0	10.0
	NW-SW	---	19.5	19.5
Section 16	NE-NE	17.4	21.7	39.1
	NW-NE	31.9	8.0	39.9
	NE-NW	29.2	8.9	38.1
	NW-NW	29.8	5.1	34.9
	SW-NW	11.3	28.4	39.7
	SE-NW	18.1	22.7	40.8
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TOTAL IN BLOCK 2		3,077.2	5,624.5	8,901.7
TOTAL IN BLOCK 1		8,946.4	2,121.9	11,068.3
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TOTAL OF BLOCKS 1 and 2		12,023.6	7,946.4	19,970.0
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LANDS OUTSIDE IRRIGATION BLOCKS 1  
AND 2 AND NOT UNDER DISTRIBUTION SYSTEM

Description	Arable Classes		Non- arable	Gross
	Class 2	Class 3		
<u>Township 9 South. Range 23 West</u>				
Section 8	55.9	2.0	172.1	230.0
Section 17	3.1	---	156.9	160.0
Section 20	12.4	13.6	124.0	150.0
TOWNSHIP TOTAL	71.4	15.6	453.0	540.0
<u>Township 10 South. Range 23 West</u>				
Section 16	---	96.4	303.6	400.0
Section 17	1.4	171.9	226.7	400.0
Section 18	---	137.4	22.6	160.0
Section 19	---	501.0	139.0	640.0
Section 21	---	125.2	34.8	160.0
Section 29	---	139.5	20.5	160.0
Section 30	52.0	562.0	26.0	640.0
Section 31	---	605.0	35.0	640.0
Section 32	---	505.0	135.0	640.0
TOWNSHIP TOTAL	53.4	2,843.4	943.2	3,840.0
<u>Township 10 South. Range 24 West</u>				
Section 24	---	411.0	229.0	640.0
Section 25	---	633.0	7.0	640.0
Section 26	---	579.0	61.0	640.0
Section 27	---	246.3	33.7	280.0
Section 34	---	447.0	193.0	640.0
Section 35	77.0	445.0	118.0	640.0
Section 36	---	600.0	40.0	640.0
TOWNSHIP TOTAL	77.0	3,361.3	681.7	4,120.0
<u>Township 11 South. Range 23 West</u>				
Section 5	---	293.9	26.1	320.0
Section 6	---	625.0	15.0	640.0
TOWNSHIP TOTAL	---	918.9	41.1	960.0

Township 11 South, Range 24 West

Section 2	81.0	442.0	117.0	640.0
Section 3	99.0	505.0	36.0	640.0
Section 4	---	286.6	113.4	400.0
Section 8	---	486.0	154.0	640.0
Section 9	---	353.3	41.7	400.0
Section 16	---	164.4	66.6	231.0
Section 17	---	265.0	16.0	279.0
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TOWNSHIP TOTAL	180.0	2,505.3	544.7	3,230.0
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TOTAL OUTSIDE BLOCKS 1 and 2	381.8	9,644.5	2,663.7	12,690.0
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## EXHIBIT "C"

## CONTRACTS AND MORTGAGES COVERING PREDEVELOPMENT CHARTERS AS OF JANUARY 1, 1956

Serial Number	Mortgagors	Description - All G. & S. R. M., Arizona	*Unaccrued Balance as of Jan. 1, 1956
1	E. C. Engler and Mary E. Engler	Lot 3 and SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 2, T. 9 S., R. 23 W.	\$ 7,285.60
1-1	E. C. Engler and Mary E. Engler	SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 2, T. 9 S., R. 23 W.	3,551.40
2	John W. and Lura O. Urbach	F. U. "B" (Lot 9, NW $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , & E $\frac{1}{2}$ SW $\frac{1}{4}$ ), Sec. 6, T. 9 S., R. 22 W.	11,116.90
3	Richard M. and Josephine Lynch	F. U. "A" (Lot 11, SE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ & SW $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 6, T. 9 S., R. 22 W.	9,516.60
4	Francis H. and Florence B. Martin	F. U. "J" (NW $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 12, T. 9 S., R. 23 W., and NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 7, T. 9 S., R. 22 W.	4,320.55
6	Frank H. and Murriel S. Sales	F. U. "C" (Lot 2, SE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 7, T. 9 S., R. 22 W., and SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 12, T. 9 S., R. 23 W.	10,396.80
7	Wm. F. and Nellie Mae Montgomery	F. U. "L" (SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 8, and SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 7), T. 9 S., R. 22 W.	4,021.20
8	Wilson and Dorothy Beach	F. U. "A" (SW $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 12, T. 9 S., R. 23 W.	12,298.50
9	Everett L. and Martha R. Booth	F. U. "K" (S $\frac{1}{2}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 12, T. 9 S., R. 23 W.	9,557.10
10	Robert D. Woodman	F. U. "C" (Lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 7, T. 9 S., R. 22 W.	6,943.00
11	Vagan and Catherine Tillman	F. U. "M" (E $\frac{1}{2}$ SW $\frac{1}{4}$ , Sec. 8, and SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 7), T. 9 S., R. 22 W.	4,579.40
12	Perl V. and Irene H. Fuller	F. U. "M" (SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 7, and W $\frac{1}{2}$ SW $\frac{1}{4}$ , Sec. 8), T. 9 S., R. 22 W.	4,527.50
13	D. E. and Verna R. O'Connell	F. U. "A" (E $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 18, T. 9 S., R. 22 W.	10,336.50
14	Everett E. and Florence I. Peterson	F. U. "M" (Lots 7, 10, 21, and SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 1, T. 9 S., R. 23 W., and NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 18, T. 9 S., R. 22 W.)	4,516.55
15	Francis W. and Mary R. Cochrane	F. U. "C" (Lots 1, 2, and SE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 18, T. 9 S., R. 22 W.	10,186.20
16	Hugh D. and Aura Belle Johnston	F. U. "A" (Lots 1, 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 13, T. 9 S., R. 23 W.	10,033.20
17	Ray J. and Ramona S. Glade	F. U. "B" (Lots 2, 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 14, and S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 12), T. 9 S., R. 23 W.	8,650.60
18	John B. and Henrietta M. Ratliff	F. U. "C" (SW $\frac{1}{4}$ ), Sec. 13, T. 9 S., R. 23 W.	13,475.70
19	Jerome E. and Emma Lou Starley	F. U. "D" (S $\frac{1}{2}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 13, T. 9 S., R. 23 W.	10,595.70
20	Charles E. and Mildred Waite	F. U. "D" (Lots 3, 4, Sec. 18, and Lots 1, 5, Sec. 19), T. 9 S., R. 22 W.	11,744.10
21	Gerald L. and Frances R. Didier	F. U. "E" (E $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 18, T. 9 S., R. 22 W.	10,314.90
22	John and Mary C. Gardner	F. U. "F" (E $\frac{1}{2}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 18, T. 9 S., R. 22 W.	10,327.50
23	Richard W. and Joann W. Livingston	F. U. "A" (Lots 6, 7, E $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 19, T. 9 S., R. 22 W.	13,167.90
24	William L. and Myrtle A. Gunlock, Jr.	F. U. "A" (Lot 1, E $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 24, T. 9 S., R. 23 W.	11,242.80
25	Robert H. and Dolores Fram	F. U. "B" (Lot 2, E $\frac{1}{2}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 24, T. 9 S., R. 23 W.	11,997.90
26	Raymond C. and Florence Walker	F. U. "C" (NW $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 24, T. 9 S., R. 23 W.	10,405.80
27	Fred B. Gregg	F. U. "A" (NW $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , and NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 23, T. 9 S., R. 23 W.	10,525.50

\* Does not include any delinquencies or interest thereon.

## EXHIBIT "C"

Serial Number	Mortgagee	Description - All G. & S. R. M., Arizona	Unaccrued Balance as of Jan. 1, 1956
28	Edson V. and Myrtle Paulsen	F. U. "B" (N1SW1/4, N1NE1/4 and N1SE1/4), Sec. 23, T. 9 S., R. 23 W.	\$ 9,605.70
29	Ephraim and Nora Speiser	F. U. "C" (N1SE1/4, SE1SW1/4 and SE1NE1/4), Sec. 23, T. 9 S., R. 23 W.	11,621.70
30	Everett L. and Omalene Miller	F. U. "D" (E1SE1/4, SE1SW1/4, NE1SW1/4 and SE1SW1/4), Sec. 23, T. 9 S., R. 23 W.	10,269.00
31	Frederick M. and Theodora C. Stewart	F. U. "D" (E1SW1/4 and SW1SW1/4), Sec. 24, T. 9 S., R. 23 W.	10,621.80
32	Everett L. and Mary E. Gatlin	F. U. "E" (S1SE1/4, SE1SW1/4 and NE1SW1/4), Sec. 24, T. 9 S., R. 23 W.	11,422.00
33	Baldwin and Helen Williams-Boote	F. U. "B" (Lots 4, 8, SW1SW1/4 and SE1SW1/4), Sec. 19, T. 9 S., R. 22 W.	9,085.50
34	James M. Brown Jr., and Juanita Brown	F. U. "B" (SW1SW1/4, N1SW1/4 and SE1SW1/4), Sec. 9, T. 9 S., R. 23 W.	13,294.80
35	Gerald K. Scott	F. U. "C" (N1NE1/4, Sec. 34 and SE1NE1/4, Sec. 9), T. 9 S., R. 23 W.	7,544.55
36	Stanley C. and Marian Lee McDonald	F. U. "C" (E1SW1/4), Sec. 21, T. 9 S., R. 23 W.	6,926.40
37	Travis W. and N. Allene White	F. U. "X" (S1NE1/4, Sec. 34, and NE1NE1/4, Sec. 21), T. 9 S., R. 23 W.	7,640.39
38	Anton H. and Esther W. Jones	F. U. "X" (N1SW1/4, Sec. 27, and NE1NE1/4, Sec. 21), T. 9 S., R. 23 W.	7,591.16
40	Earl E. and Helen A. Johnson	F. U. "P" (E1SW1/4, Sec. 33, and SW1NE1/4, Sec. 21), T. 9 S., R. 23 W.	8,262.28
41	Samuel M. and Ida S. Spry	SW1SW1/4 and E1NE1/4, Sec. 21, T. 9 S., R. 23 W.	5,130.90
41-1	Walter and Frances L. Trussell	N1SW1/4 and NE1SW1/4, Sec. 21, T. 9 S., R. 23 W.	4,544.10
42	Evered J. Mason	F. U. "S" (S1SW1/4, Sec. 34, and NE1SW1/4, Sec. 21), T. 9 S., R. 23 W.	7,703.63
43	Claude M. and Mary I. Roe	F. U. "D" (S1SW1/4, Sec. 27, and NE1SW1/4, Sec. 21), T. 9 S., R. 23 W.	7,422.08
44	Orville D. and Pearl E. Wood	F. U. "D" (N1SW1/4, Sec. 27, and NE1SW1/4, Sec. 22), T. 9 S., R. 23 W.	7,657.95
45	Robert R. Forrest	F. U. "C" (E1SW1/4 and SW1SW1/4), Sec. 22, T. 9 S., R. 23 W.	10,545.30
46	John R. and Laura M. Scarbrough, Jr.	F. U. "V" (S1SW1/4, Sec. 27, and SE1SW1/4, Sec. 21), T. 9 S., R. 23 W.	7,427.71
47	Cecil E. and Marylouise Throne	F. U. "U" (N1SW1/4, Sec. 34, and SW1SW1/4, Sec. 21), T. 9 S., R. 23 W.	7,668.14
48	Stephen H. and Alma G. Flood, Jr.	F. U. "T" (N1SW1/4, Sec. 33, and SW1SW1/4, Sec. 21), T. 9 S., R. 23 W.	7,798.51
49	Dale and Norma Hyatt	F. U. "E" (N1SW1/4 and SW1SW1/4), Sec. 28, T. 9 S., R. 23 W.	7,780.79
50	William F. and Virginia B. West	F. U. "X" (Lot 1, N1NE1/4 and N1SW1/4), Sec. 28, T. 9 S., R. 23 W.	9,231.10
51	Herbert L. and Frances S. Morris	F. U. "C" (N1SW1/4, Sec. 27, and SE1SW1/4, Sec. 28), T. 9 S., R. 23 W.	8,719.79
52	Charles A. and Virginia L. Watson	F. U. "S" (E1SW1/4 and SE1SW1/4), Sec. 27, T. 9 S., R. 23 W.	10,431.90
53	Norman W. and Andraean I. Sherman	F. U. "X" (E1SW1/4 and NE1SW1/4), Sec. 27, T. 9 S., R. 23 W.	10,133.10
54	Norman A. and Nylon H. Reeves	SE1SW1/4 and NE1SW1/4, Sec. 28, T. 9 S., R. 23 W.	2,493.00
54-1	Al John and Inelda Fernandez	S1SW1/4, SW1SW1/4 and N1SW1/4, Sec. 28, T. 9 S., R. 23 W.	3,685.38
54-2	D. M. and Pearl M. Phillips	E1SW1/4 and SE1SW1/4, Sec. 28, T. 9 S., R. 23 W.	2,311.27
55	Dale and Mary Jane Curtis	F. U. "A" (E1SW1/4, Sec. 8, and N1SW1/4, Sec. 9), T. 9 S., R. 24 W.	2,000.00
	and Lucille J. Winkley	F. U. "B" (E1SW1/4 and N1SW1/4), Sec. 8, T. 9 S., R. 24 W.	2,511.35

## EXHIBIT "C"

Serial Number	Mortgagors	Description - All G. & S. R. M., Arizona	Unadjusted Balance as of Jan. 1, 1946
63	Coyle Wayne and Sibel Faye Turner	F. U. "A" (E <sub>1</sub> N <sub>1</sub> W <sub>1</sub> and SW <sub>1</sub> N <sub>1</sub> W <sub>1</sub> ), Sec. 17, T. 9 S., R. 22 W.	\$ 6,052.25
64	Harold J. and Ruth E. Markey	F. U. "B" (SW <sub>1</sub> ), Sec. 17, T. 9 S., R. 22 W.	19,068.60
65	Mack Gates and Carroll L. Gates	F. U. "A" (Lots 14, 18, SW <sub>1</sub> N <sub>1</sub> W <sub>1</sub> and SE <sub>1</sub> N <sub>1</sub> W <sub>1</sub> ), Sec. 1, T. 9 S., R. 23 W.	1,895.45
66	Bernard LeVaire and Ruby M.L. Seaman	F. U. "A" (SW <sub>1</sub> ), Sec. 25, T. 9 S., R. 23 W.	11,775.19
67	William McCart and Anna U. Waldrup	F. U. "C" (E <sub>1</sub> N <sub>1</sub> W <sub>1</sub> and E <sub>1</sub> SW <sub>1</sub> ), Sec. 28, T. 9 S., R. 23 W.	18,495.20
68	Ralph E. and Yvonne J. Nixon	F. U. "A" (SE <sub>1</sub> ), Sec. 33, T. 9 S., R. 23 W.	9,680.20
69	Bernard A. and Jeanette R. Connolly	F. U. "B" (NE <sub>1</sub> SW <sub>1</sub> , E <sub>1</sub> N <sub>1</sub> SW <sub>1</sub> , E <sub>1</sub> SW <sub>1</sub> SW <sub>1</sub> , E <sub>1</sub> SW <sub>1</sub> SW <sub>1</sub> , E <sub>1</sub> SW <sub>1</sub> SW <sub>1</sub> and SE <sub>1</sub> SW <sub>1</sub> ), Sec. 33, T. 9 S., R. 23 W.	8,485.62
70	John Dean and Marjorie A. Hemphill	F. U. "A" (SE <sub>1</sub> ), Sec. 34, T. 9 S., R. 23 W.	7,812.76
71	A. K. and Delma D. Harvick	F. U. "B" (SW <sub>1</sub> ), Sec. 34, T. 9 S., R. 23 W.	7,820.25
72	Kurrel B. and Maggie K. Faulkenberry	F. U. "A" (Lots 3, 4, SW <sub>1</sub> N <sub>1</sub> W <sub>1</sub> and SE <sub>1</sub> N <sub>1</sub> W <sub>1</sub> ), Sec. 1, T. 10 S., R. 23 W.	2,346.35
73	Lawrence A. and Justine L. Lenke	F. U. "A" (Lots 1, 2, 3 and 4), Sec. 3, T. 10 S., R. 23 W.	5,996.57
74	Armsted M. and Jean Y. McKinney	F. U. "B" (SW <sub>1</sub> W <sub>1</sub> and NE <sub>1</sub> SW <sub>1</sub> ), Sec. 3, T. 10 S., R. 23 W.	8,007.71
75	Ferriol D. and Helen L. Allen	F. U. "C" (SW <sub>1</sub> W <sub>1</sub> and NE <sub>1</sub> SW <sub>1</sub> ), Sec. 3, T. 10 S., R. 23 W.	8,109.06
76	John F. and Elizabeth L. Anderson	F. U. "D" (SW <sub>1</sub> W <sub>1</sub> and SE <sub>1</sub> SW <sub>1</sub> ), Sec. 3, T. 10 S., R. 23 W.	7,744.44
77	Spencer K. Lamb	F. U. "A" (Lots 1, 2, SW <sub>1</sub> W <sub>1</sub> and SE <sub>1</sub> W <sub>1</sub> ), Sec. 4, T. 10 S., R. 23 W.	5,138.83
78	Lyman T. and Myrtle L. Cox	F. U. "B" (Lot 3, 5, 8, 9, 11 and SE <sub>1</sub> W <sub>1</sub> ), Sec. 4, T. 10 S., R. 23 W.	9,621.40
79	Wilbur and Margaret Moore	F. U. "C" (SE <sub>1</sub> ), Sec. 4, T. 10 S., R. 23 W.	9,675.72
80	Alvin and Rosa M. Lindsey	F. U. "A" (NE <sub>1</sub> ), Sec. 9, T. 10 S., R. 23 W.	7,664.81
81	Rush T. and Florence E. Gilpin	F. U. "B" (SE <sub>1</sub> ), Sec. 9, T. 10 S., R. 23 W.	6,423.00
82	Emmett L. and Lucelia F. Morkley	F. U. "A" (NE <sub>1</sub> ), Sec. 10, T. 10 S., R. 23 W.	2,655.30
83	Wilton G. Stafford	F. U. "B" (NE <sub>1</sub> ), Sec. 10, T. 10 S., R. 23 W.	2,596.85
84	Emanuel E. & Madeline Winebarger	F. U. "C" (SW <sub>1</sub> ), Sec. 10, T. 10 S., R. 23 W.	2,646.95
85	Donald K. and Theresa W. Edwards	F. U. "D" (SE <sub>1</sub> ), Sec. 10, T. 10 S., R. 23 W.	2,663.65
86	Donald M. and Dorothy J. Tuttle	F. U. "B" (NE <sub>1</sub> W <sub>1</sub> , NE <sub>1</sub> N <sub>1</sub> W <sub>1</sub> , SW <sub>1</sub> N <sub>1</sub> W <sub>1</sub> , NE <sub>1</sub> SW <sub>1</sub> ), Sec. 11, T. 10 S., R. 23 W.	2,246.15
87	Hoson McRae & Lorraine V. Whitten	F. U. "A" (NE <sub>1</sub> SW <sub>1</sub> W <sub>1</sub> , NE <sub>1</sub> SW <sub>1</sub> W <sub>1</sub> , NE <sub>1</sub> SW <sub>1</sub> , SW <sub>1</sub> W <sub>1</sub> , SE <sub>1</sub> SW <sub>1</sub> W <sub>1</sub> , NE <sub>1</sub> SW <sub>1</sub> SW <sub>1</sub> , and NE <sub>1</sub> SW <sub>1</sub> SW <sub>1</sub> ), Sec. 12, T. 10 S., R. 23 W.	2,346.35

LIST OF PUBLIC LANDS SUBJECT TO SMITH ACT  
PUBLIC UNENTERED LANDS: All in Gila and Salt River Meridian

Township 9 South, Range 23 West

<u>Section</u>	<u>Description</u>
8	$E\frac{1}{2}SE\frac{1}{2}; SW\frac{1}{2}; NE\frac{1}{4}$
9	$SW\frac{1}{2}SE\frac{1}{2}$
17	$E\frac{1}{2}NE\frac{1}{4}; E\frac{1}{2}SE\frac{1}{4}$
20	$E\frac{1}{2}NE\frac{1}{4}; NE\frac{1}{4}SE\frac{1}{4}; E\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}; E\frac{1}{2}W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$
21	$W\frac{1}{2}NW\frac{1}{4}$
28	Lot 2
33	That portion of $W\frac{1}{2}NW\frac{1}{4}$ lying east of B Main Canal right-of-way

Township 10 South, Range 23 West

1	Lot 1, $SE\frac{1}{4}NE\frac{1}{4}$
4	Those portions of Lots 10 and 15 lying north and east of the B Main Canal right-of-way
9	That portion of $SE\frac{1}{4}SW\frac{1}{4}$ lying east and south of the B Main Canal right-of-way
17	$SE\frac{1}{4}NE\frac{1}{4}; NE\frac{1}{4}SW\frac{1}{4}; E\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}; W\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}; S\frac{1}{2}$
18	$SE\frac{1}{4}$
19	All
21	$NE\frac{1}{4}$
29	$W\frac{1}{2}NW\frac{1}{4}$
30	All
31	All
32	All

Township 10 South, Range 24 West

24	All
25	All
26	All
27	$S\frac{1}{2}SE\frac{1}{2}; NE\frac{1}{4}SE\frac{1}{4}; E\frac{1}{2}NE\frac{1}{4}$
34	All
35	All

Township 11 South, Range 23 West

5	$NW\frac{1}{4}; W\frac{1}{2}NE\frac{1}{4}; W\frac{1}{2}SW\frac{1}{4}$
6	All

Township 11 South, Range 24 West

2	All
3	All
4	$E\frac{1}{2}; E\frac{1}{2}SW\frac{1}{4}$
8	All
9	$W\frac{1}{2}; W\frac{1}{2}NE\frac{1}{4}$
16	That portion of $W\frac{1}{2}$ north of the International Boundary Line
17	That portion lying north of the International Boundary Line



## LANDS UNDER THE DISTRIBUTION SYSTEM NOT HERETOFORE LISTED IN PUBLIC NOTICES ANNOUNCING AVAILABILITY OF WATER

G250RM		Section	Description	Gross Acres
Township (South)	Range (West)			
9	22	31	Lot 4 SE $\frac{1}{4}$ SW $\frac{1}{4}$	39.53 40.48
9	23	2	SE $\frac{1}{4}$ SW $\frac{1}{4}$	40.53
9	23	9	SW $\frac{1}{4}$ SE $\frac{1}{4}$	40.00
9	23	28	Lot 2 NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$	7.7 40.20 40.27
9	23	33	NW $\frac{1}{4}$ NW $\frac{1}{4}$ (That portion lying east of the B Main Canal R/W) SW $\frac{1}{4}$ NW $\frac{1}{4}$ (That portion lying east of the B Main Canal R/W)	50.1
10	22	6	Lot 4 Lot 5	49.52 42.31
10	23	1	Lot 1 SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$	40.40 40.30 40.40
10	23	4	Lots 10 and 15 (That portion lying east of B Main Canal R/W)	10.4
10	23	9	SE $\frac{1}{4}$ SW $\frac{1}{4}$ (That portion lying east of the B Main Canal R/W)	17.3

## LIST OF LANDS ABOUT WHICH DISTRICT WILL BE CONSULTED PRIOR TO BUREAU ACTION THEREON

GOSUM					
Township (South)	Range (West)	Section	Description		Gross Acres
9	23	8	E $\frac{1}{2}$ E $\frac{1}{2}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$		200
9	23	9	SW $\frac{1}{4}$ SE $\frac{1}{4}$		40
9	23	17	E $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$		160
9	23	20	E $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$		150
9	23	21	W $\frac{1}{2}$ NW $\frac{1}{4}$		80
9	23	28	Lot 2		7.7
9	23	33	That portion of W $\frac{1}{2}$ NW $\frac{1}{4}$ lying east of B Main Canal R/W		50.1
10	23	1	Lot 1, S $\frac{1}{2}$ NE $\frac{1}{4}$		121.1
10	23	4	Those portions of Lots 10 and 15 lying north and east of B Main Canal R/W		10.4
10	23	9	That portion of SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying east and south of B Main Canal R/W		17.3

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Region 3  
Boulder City, Nevada

(Sent out  
July 16)

Mr. Lowell O. Weeks, Manager  
Coachella Valley County Water District  
Coachella, California

Dear Mr. Weeks:

In announcing at Las Vegas on May 16, 1964, that he had directed the Bureau of Reclamation to secure a ten percent reduction in diversions of water from the lower Colorado River during the seven months beginning June 1, 1964, the Secretary of the Interior also announced that special consideration would be given to hardship cases or special problems which might arise in the implementation of his order. As Director of Region 3 of the Bureau of Reclamation, I was given the responsibility for making adjustments in hardship cases.

When the reduction was ordered it was anticipated that improved water management practices well within the capabilities of the operating entities would permit the reduction to be absorbed without hardship to individual irrigators. The Department and the Bureau remain convinced that a ten percent reduction in Colorado River diversions can be effectuated during the last seven months of this calendar year without adverse effect upon the amount of water available to farmers for irrigating and maturing growing crops. It was not, and is not, the intention of the Secretary of the Interior or of the Bureau of Reclamation that the reduction in diversions be applied in such manner as to result in impairment of crop yield to any individual. Standards of sound water conservation do not require that individual crop losses occur.

Each entity and individual water user must however continue to employ the most prudent methods to utilize the quantity of water available under the reduced schedule of diversions. Obviously additional water will be available for delivery to meet individual hardship cases if any develop. Therefore, I am asking that each entity keep in close touch with the Bureau in order that effective and timely action can be taken to assure that individual needs are met, while at the same time over-diversions, excess deliveries, and other forms of waste are kept to a minimum.

Exhibit No. 27

It is gratifying to observe that the reduction in diversions made necessary by these years of low run-off has met with a high degree of cooperation by contractors for Colorado River water. With a continued cooperative and vigilant efforts to reduce waste and maintain frugal water use practices, I am confident that the immediate objective of the program to reduce Colorado River diversions will be achieved.

Sincerely yours,

A. B. West  
Regional Director

Identical letters to:

- Mr. Robert F. Carter, Gen. Mgr., Imperial Irrigation Dist.,  
202 State St., El Centro, Calif.
- Mr. J. H. Dickerson, Mgr., Palo Verde Irrigation Dist., Box 38,  
Blythe, Calif.
- Mr. Virgil Vanzo, Pres., Unit B Irrigation and Drainage Dist.,  
Route 1, Box 31-M, Somerton, Ariz. (w/c Mr. Wm. P. Copple, Atty.,  
Yuma, Ariz.)
- Mr. Edgar H. Shahan, Pres., Wellton-Mohawk Irrigation and Drainage  
Dist., P.O. Box 817, Wellton, Ariz.
- Mr. Sam F. Dick, Pres., Yuma County Water Users Assn., Post Box 708,  
Yuma, Ariz.
- Mr. E. E. Winbarger, Pres., Yuma Mesa Irrigation and Drainage Dist.,  
Route 3, Box 32, Yuma, Ariz.
- Mr. James Ferguson, Pres., North Gila Valley Irrigation Dist.,  
P.O. Box 1511, Yuma, Ariz. (w/c Mr. Wm. P. Copple, Atty., Yuma,  
Ariz.)
- Mr. W. Wade Ford, Area Director, Bureau of Indian Affairs, Post  
Box 7007, Phoenix, Ariz.

(HEADING OMITTED)

Civil Action No. 1551-64

AFFIDAVIT

Washington )  
 ) SS.  
District of Columbia )

THEODORE H. MOSER, being first duly sworn, deposes and says:

I am the Project Manager, Yuma Projects Office, Bureau of Reclamation and have acted in said capacity since February 1964. Prior to my appointment I served as Deputy Project Manager of the Yuma Projects Office since September 1963 and Assistant Project Manager, Rio Grande Project, El Paso, Texas, from 1957-1963. I am a graduate Civil Engineer and registered Professional Engineer in the States of Kansas, Texas, and New Mexico. I am a Fellow of the American Society of Civil Engineers and a member of the United States National Committee, International Commission on Irrigation and Drainage. I am now and have been since 1948 directly engaged in irrigation and drainage operations on large irrigation projects, as an employee of the Bureau of Reclamation.

The Yuma Projects Office of the Bureau of Reclamation which I head is under the administrative jurisdiction of Region 3 of the Bureau of Reclamation headed by Regional Director A. B. West, whose headquarters are at Boulder City, Nevada. As Project Manager, Yuma Projects Office, I supervise all Bureau of Reclamation construction, operation, maintenance, and drainage operations in the Yuma, Arizona

Exhibit II

area. In addition, the Yuma Projects Office is responsible for the administration of major water delivery contracts between the United States, represented by the Secretary of the Interior, and the various water users' organizations in the Yuma area. These include Imperial Irrigation District and Coachella Valley County Water District in California; the Gila Project in Arizona consisting of the Wellton-Mohawk Division represented by the Wellton-Mohawk Irrigation and Drainage District and the Yuma Mesa Division, the latter division in turn comprising the Yuma Mesa Irrigation and Drainage District, the North Gila Valley Irrigation District and the Yuma Irrigation District. In addition I administer Departmental water delivery contracts with the Yuma Auxiliary Project represented by Unit "B" Irrigation and Drainage District and with the Yuma Project. The Yuma Project comprises the Valley Division in Arizona represented by the Yuma County Water Users' Association and the Reservation Division which is in California. The Reservation Division is operated and maintained by the United States under my direct administrative control. These contracting entities comprise a total of approximately 800,000 irrigable acres. In addition, I am responsible in part for the fulfillment of the obligations of the United States to deliver water to Mexico under the Mexican Water Treaty, proclaimed November 27, 1945.

Water for the California contractors and for the Valley Division of the Yuma Project is diverted from the West end of the Imperial Dam through the All-American Canal. The Imperial Dam, located approximately

eighteen miles northeast of Yuma, Arizona, is primarily a diversion structure, and is capable of storing only about 1,000 acre-feet of water (an acre-foot of water is that quantity of water which would cover one acre of land with one foot of water).

Water for the Gila Project, Arizona, of which the Yuma Mesa Division is a part, is diverted from the east end of Imperial Dam into the Gila Gravity Main Canal. Water is then diverted from the Gila Gravity Main Canal for the North Gila Valley District, and then for the Wellton-Mohawk Division of the Gila Project. (The North Gila Valley District is part of the Yuma Mesa Division of the Gila Project, which also includes the Yuma Mesa Irrigation and Drainage District - see attached map, Exhibit 1.) Approximately 20 miles below Imperial Dam, the Gila Gravity Main Canal ends at the Yuma Mesa Pumping Plant. Here, the water is lifted by pumps for the Yuma Mesa Irrigation and Drainage District (also a portion of the Yuma Mesa Division) and for Unit "B" Irrigation and Drainage District which makes up the Yuma Auxiliary Project, a distinct and separate project from the Gila Project.

The Act of July 30, 1947 (61 Stat. 628) commonly known as the Gila Project Reauthorization Act, reduced the area of the Gila Project "...to approximately forty thousand irrigable acres of land (twenty-five thousand acres thereof situated on the Yuma Mesa and fifteen thousand acres thereof within the North and South Gila Valleys), or such number of acres as can be adequately irrigated by the beneficial consumptive use



of no more than three hundred thousand acre feet of water per annum diverted from the Colorado River, and as thus reduced is hereby re-authorized and redesignated the Yuma Mesa Division, Gila project . . . "

On May 26, 1956, the United States, represented by the Secretary of Interior, entered into a repayment contract with the Yuma Mesa Irrigation and Drainage District (Exhibit 8 attached to Commissioner Dominy's affidavit herein). (Exhibit 2 has been deleted.) This contract is administered by me.

The contract provides that: "4. As far as reasonable diligence will permit, the United States will . . . divert at Imperial Dam and deliver to or for the District through the Gila Gravity Main Canal . . . such quantities of water . . . as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres situated therein . . . " "(a) The availability of water for the division under the provisions of the Colorado River Compact, the Act of December 21, 1928 (45 Stat. 1057), and the Act of July 30, 1947 (61 Stat. 628); provided, however, that the quantities of water which the District shall be entitled to receive under this contract shall not, in any event, exceed an appropriate and equitable share of the quantities of water available for the division, all as determined by the Secretary . . . " "(d) . . . Provided, however, that the maximum rate of diversion at Imperial Dam of water for delivery hereunder shall be five hundred and twenty (520) cubic feet per second; . . . " (underscoring added)

I can assert that, with the exception of a few scattered days in the last eight (8) years in which insufficient water may have been available at Imperial Dam for all water users, there has been no period of time when the Yuma Mesa Irrigation and Drainage District was unable to obtain all of the water it ordered to be diverted. On the other hand, there have been many more days than this when Yuma Mesa Irrigation and Drainage District was permitted to obtain more water than it originally ordered, at such times as additional water was available at Imperial Dam.

Since June 1, 1964, when the water diversions were curtailed pursuant to the order of the Secretary of the Interior, the records show that more water has actually been available to and diverted by the Yuma Mesa Irrigation and Drainage District than has been ordered by and scheduled for the District. This is demonstrated by the attached page entitled "Yuma Mesa District: Master Schedule and Diversions for June 1964," (Exhibit 3) which is the record of measurements of water diverted by the District, which record is received from the District and maintained by my office as a part of our official duties. Thus, the quantity of water ordered by the District has not been curtailed.

As noted above, the administration of the aforesaid repayment contract of May 26, 1956, is the responsibility of my office. As is expressly provided by the above-quoted proviso of Article 4 of the District contract, the maximum rate at which water may be diverted at Imperial Dam for delivery to the District is 520 c.f.s. To measure the rate of

diversion at Imperial Dam, which is approximately 20 miles north of the pumping plant from which the District pumps water for delivery to its lands, requires the District to absorb the losses attributable to the transmission of the District's water from Imperial Dam to the pumping plant. Nevertheless, the District has not been charged with those transmission losses in the past, although they amount to approximately 26 cfs. Stated another way, 520 cfs measured at Imperial Dam is the equivalent of 494 cfs at the Yuma Mesa Pumping Plant. Therefore, the District has been and is actually receiving and diverting more water than it is entitled to under the explicit provisions of the contract.

Regional Director A. B. West, pursuant to the directive of the Secretary of the Interior, by letter dated May 19, 1964, (Exhibit 6 attached to Commissioner Dominy's affidavit in this case) notified the District that the diversions for the seven-month period of June through December 1964 would be reduced by 10 per cent to 158,400 acre-feet. By letter of May 28, 1964, (Exhibit 7 attached to Commissioner Dominy's affidavit in this case) the District requested that an adjustment be made for the unusually heavy rains in September 1963. The District requested an amount of water before applying the 10 per cent cut, based on the average of the actual usage during the last seven months of 1962 and 1963, with September 1963 adjusted to the same amount as September 1962. By this method of computation and based on the District's figures, the 1964 seven-month schedule was listed as 164,398 acre-feet.

The District also included in its requested amounts of water for diversion at the pumping plant, a quantity of water equal to the amount of tile drain effluent used for irrigation within the District. By my letter of June 19, 1964, to the District (Exhibit 4), I corrected the diversion figures to exclude any amount for tile drain effluent, which constitutes a re-use of water, rather than being a part of the river diversions measured at the Yuma Mesa pumping plant. The corrected diversions totaled 181,422 acre-feet. The allegations on this point in the District's complaint reflect a misunderstanding of these facts. However, my letter of June 19, 1964, to the District did approve the requested adjustment for the September 1963 rains and also approved the method used by the District for computing its 1964 demand.

Applying a 10 percent reduction to the District's corrected diversion figure of 181,422 acre-feet, the cut amounts to 18,142 acre-feet, leaving a seven-month diversion of 163,280 acre-feet available to the District. In addition to this, the District still has - as in the past - the use, for irrigation purposes, of the entire amount of the tile drain effluent.

During the months of June, July, and August 1963, the District actually pumped and diverted 33,718, 36,244, and 35,912 acre-feet of water, respectively, or a total of 105,874 acre feet. Taking into account that the losses in the Gila Gravity Main Canal attributable to the transmission of Yuma Mesa Irrigation and Drainage District water are approximately 26 cfs, leaving a maximum flow of 494 cfs, the contract entitlement of the District for the months of June, July, and August 1963 totaled

approximately 90,145 acre feet. Thus, the District's actual diversions during the three-month period of 105,874 acre feet was 15,729 acre-feet greater than its contract entitled it to.

Not only did the District receive flows in excess of its maximum contract rate during June, July, and August 1963, but it also did so during most of the month of September (using 1962 as the basis rather than 1963) and parts of the months of October and December 1963. The daily diversions in excess of the maximum contracted capacity of 494 cfs at the pumping plant during these last four months of the calendar year reflect a total flow of 3,306 acre feet over the maximum rate of diversion. This excess amount, when added to the excess of 15,729 acre-feet diverted during June, July, and August, totals 19,035 acre-feet. This is 893 acre-feet more than the 10 percent cut of 18,142 acre-feet for the seven-month period.

Thus, a reduction in the District's diversions of more than the ordered 10 percent would have been appropriately accomplished in any event if the rate of flow (allowed the District were not permitted to exceed the maximum for which the District has contracted when measured at Imperial Dam as the contract specifies. In addition, this would have the effect of cutting the District back by more than 10 percent and during the critical summer months. In brief, the Secretary's 10 percent reduction order is more considerate of crop needs than a strict insistence on the contract terms.

The District's complaint alleges that the United States is wasting water by over-deliveries to Mexico. In fact, one major source of those

over-deliveries is the inefficient District practices in ordering more water than it needs and then refusing delivery of part of its order.

In ordering water for its irrigation requirements, the District submits its proposed water schedule weekly to the Yuma Projects Office, Bureau of Reclamation, which I head. This order is combined with those of the other irrigation entities of the Gila Project and Unit "B" Irrigation and Drainage District which take water from the Gila Gravity Main Canal. The combined order is then submitted to the Supervisor at Imperial Dam. It is there incorporated into the master schedule for all water diversions from the Colorado River in the Yuma area. This master schedule is the basis for the release of water from Parker Dam which is located approximately 150 miles north of Imperial Dam. Parker Dam is the last structure on the Colorado River from which releases of water from storage are made. (As previously stated, Imperial Dam itself is primarily a diversion structure and is capable of storing only 1,000 acre-feet of water at a given time.) Since it takes approximately 3 days or 72 hours for water released at Parker Dam to reach Imperial Dam, three days notice is required for any change in the District's water orders. After water is released from storage at Parker Dam for delivery to an ordering water user organization, it is not possible for that water user organization to reduce its master schedule order. It can only reject or otherwise waste that ordered water if it is not accepted and used for irrigation. The water rejected by the water user organization may, in rare instances, be utilized by other water user organizations but in the vast majority of cases rejected water is "wasted"

and cannot be recovered for use in the United States, but flows on down the Colorado River to Mexico.

Mexico already receives specified quantities of water pursuant to its orders, as provided for in the Mexican Water Treaty of 1944. Mexico's orders are also included within the master schedule compiled at Imperial Dam, and water to satisfy these orders must also be released at Parker Dam. Thus, water initially ordered by a water user organization and rejected by it after that water is released from Parker Dam ordinarily becomes part of an overdelivery to Mexico and, from the United States' viewpoint, is "wasted".

In calendar year 1962, the Yuma Mesa Irrigation and Drainage District submitted master schedule orders calling for the release to it of a total of 324,030 acre-feet of water for the calendar year. After the water had been released from storage at Parker Dam, the total amount pumped at the Yuma Mesa Pumping Plant was 280,467 acre-feet for the year. Omitting those days in 1962 in which the District took more water than ordered, the District actually rejected 58,467 acre-feet or 18.0 percent of the quantity ordered by it and released from storage at Parker Dam.

In calendar year 1963, the District submitted master schedule orders calling for the release to it of a total of 310,730 acre-feet for the calendar year. The District actually pumped 273,836 acre-feet during 1963 at the Yuma Mesa Pumping Plant. Again omitting those days in 1963 in which the District took more water than ordered, the District actually rejected 47,149 acre feet or 15.2 percent of the total quantity ordered by



it and of the amount released from storage at Parker Dam.

For the first five months of 1964, the District submitted master schedule orders calling for the delivery to it of a total of 114,892 acre-feet. After this water had been released from storage at Parker Dam, the District only pumped 89,750 acre-feet and rejected 27,141 acre-feet, or 23.6 percent of the water that had been ordered and released for it.

Attached hereto as Exhibit 5 are tabulations for each of the calendar years, 1962, 1963, and the first five months of 1964, of the water orders and actual deliveries cited above.

The Yuma Mesa Irrigation and Drainage District's regular practice of over-ordering its master schedule water and then refusing part of the water order after it has been irrevocably released from Parker Dam is the direct result of wasteful practices in the ordering of water. Proper conservation practices, particularly in this time of severe under-supply, require that the District order only what it needs, and that it take what it orders. For this reason, the Regional Director, in implementing the Secretary's 10 per cent reduction order, notified the water users by his letter of May 19, 1964 (Exhibit 6 of Commissioner Dominy's affidavit herein) that they would be charged for all water ordered, even if that water were later refused.

The District has also engaged in another wasteful practice which I personally have called to their attention. This refers to the District's

practice of charging less for extra water than for base supply, thus encouraging a wasteful use of water. This practice is described in detail in Commissioner Dominy's affidavit herein.

I have personally talked to District officials, including their Manager, Mr. T. R. Meyer, and all three of the Directors of their Board (Mr. E. E. Winebarger, Mr. Eldon Paulsen, and Mr. Charles E. Waits) on several occasions since I became Project Manager in February of 1964, in order to seek to persuade them to terminate this wasteful practice by appropriately increasing the District charge for extra water. My efforts were not successful, however.

I have also been informed in the course of my official duties, by my immediate predecessor as Project Manager, Mr. W. A. Steenbergen, that he had made similar efforts in the recent past with equal lack of success. I have also been present when several officials from the Boulder City Regional Office of the Bureau of Reclamation attempted to persuade one or more of these District officials to the same effect, and with similar lack of success.

It is my considered conclusion, based on the above, that the District has little cause for complaint herein inasmuch as it is currently receiving water at a greater rate than its contract permits. If restricted to its contract amount, the District would undergo a greater curtailment in water deliveries and at less convenient times than provided by the Secretary's 10 percent reduction order. In addition, the District is inducing "waste"

in the sense of over-deliveries to Mexico, by its wasteful practice in ordering more water than it needs.

/s/ Theodore H. Moser  
THEODORE H. MOSER

Subscribed and sworn to before me this 21st day of July, 1964.

/s/ Mary M. McLaughlin  
Notary Public, D. C.

My Commission expires:

February 9, 1968



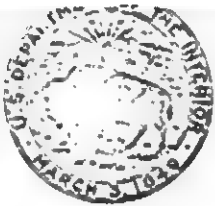
## YUMA MESA IRRIGATION AND DRAINAGE DISTRICT:

## MASTER SCHEDULE AND DIVERSIONS FOR JUNE 1964

<u>Day</u>	<u>Master Schedule</u>	<u>Diversions at Yuma Mesa Pumping Plant</u>
1	520 cfs	529 cfs
2	520	522
3	520	524
4	520	527
5	520	520
6	520	505 **
7	520	516 **
8	520	533
9	520	524
10	520	532
11	520	529
12	520	557
13	520	600
14	520	572
15	520	549
16	520	516 **
17	520	530
18	520	527
19	520	536
20	520	519 **
21	520	568
22	520	525
23	520	525
24	520	523
25	520	522
26	520	522
27	520	523
28	520	520
29	520	530
30	<u>520</u>	<u>524</u>
Total cfs days	15,600	15,949
Total acre-feet	30,943	31,635 *

\* Footnote 1. A net amount of 314 acre-feet was not charged against the District's 7-month allocation of water because it consisted of extra water available at Imperial Dam.

\*\* Footnote 2. These deliveries were below 520 cfs as a result of District failures to pump all water made available. They do not reflect any unavailability of water.



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
YUMA PROJECTS OFFICE - REGION 3  
BIN 151  
YUMA, ARIZONA

*Exhibit 4*

IN REPLY  
REFER TO: 303-100

JUN 19 1964

Mr. E. E. Winebarger, President  
Yuma Mesa Irrigation and Drainage District  
Route 3, Box 32  
Yuma, Arizona

Dear Mr. Winebarger:

Your letter of May 28, 1964 to Regional Director, A. B. West, has been carefully considered. We recognize that because a very large percent of the land in the District is planted to citrus, because the soil is sandy and because the irrigation system has no wasteways from which to absorb some of the cutback in water, the impact of the September 1963 storm probably had a greater effect on your District than on others. Accordingly, we are willing to give special consideration to your District in line with the proposal in your letter.

May I call your attention, however, to the fact that the tabulation of monthly diversions attached to your letter included return flow developed from the tile drainage system. Deducting this, the total diversions for the last seven months of 1962 and 1963 were 182,207 and 173,910 acre feet, respectively. Allowing the same amount for September 1963 as was used in September 1962, and averaging the two years, the total diversion for the June-December 1964 period would be 163,280 acre feet.

A tabulation of monthly diversions and the computation of the 1964 allowance, in the same manner as made in your letter, is shown on the enclosure.

I will appreciate your furnishing a revised schedule of diversions showing a seven-month total of 163,280 acre feet as soon as possible.

Sincerely yours,

*T. H. Moser*

T. H. Moser  
Project Manager

Enclosure

bc:

Commissioner, Washington, D.C., Attention: 400  
Regional Director, Boulder City, Nevada, Attention: 3-100, 3-400 and 3-180  
Regional Solicitor, Los Angeles, California

[ 214 ]

Monthly Diversions to the Yuma Mesa  
Irrigation and Drainage District at the Pumping Plant  
(Acre Feet)

	Use <u>1962</u>	Use <u>1963</u>
June	31,750	33,718
July	35,631	36,244
August	36,108	35,912
September	31,163	24,434
October	19,480	18,637
November	16,688	13,896
December	11,387	11,069
	<u>182,207</u>	<u>173,910</u>

Total use for 1962 and 1963 = 356,117 A.F.

Total use adjusted for September 1963 rains = 362,846 A.F.

Adjusted average = 181,423 A.F.

Less 10% = - 18,142 A.F.

Seven-month allotment = 163,281 A.F.

Rounded: 163,280 A.F.



## MASTER SCHEDULE ORDER AND DIVERSION

Quantities in Acre-Feet

<u>1962</u>				
<u>Month</u>	<u>Master Schedule</u>	<u>Diversion</u>	<u>Difference from Master Schedule.</u>	<u>Ordered but Rejected</u>
January	21,550	13,709	- 7,841	9,820
February	27,769	12,935	-14,834	14,892
March	26,182	14,958	-11,224	17,119
April	24,595	25,441	+ 846	1,087
May	32,033	31,217	- 816	976
June	32,231	31,750	- 481	660
July	35,345	35,631	+ 286	278
August	35,584	36,108	+ 524	399
September	33,590	31,163	- 2,427	2,773
October	21,392	19,480	- 1,912	2,757
November	19,438	16,688	- 2,750	3,176
December	<u>14,321</u>	<u>11,387</u>	<u>- 2,934</u>	<u>4,530</u>
Total	324,030	280,467	-43,563	58,467
				(18.0%)
<u>1963</u>				
January	16,790	13,410	- 3,380	7,127
February	14,241	11,343	- 2,898	3,608
March	21,124	17,604	- 3,520	4,413
April	26,836	24,418	- 2,418	2,767
May	34,116	33,151	- 965	1,543
June	35,603	33,718	- 1,885	2,103
July	36,893	36,244	- 649	871
August	36,843	35,912	- 931	1,043
September	30,992	24,434	- 6,558	6,942
October	23,226	18,637	- 4,589	5,119
November	17,008	13,896	- 3,112	3,947
December	<u>17,058</u>	<u>11,069</u>	<u>- 5,989</u>	<u>7,666</u>
Total	310,730	273,836	-36,894	47,149
				(15.2%)
<u>1964</u>				
January	20,331	12,903	- 7,428	7,819
February	18,089	11,264	- 6,825	7,101
March	19,041	13,281	- 5,760	6,411
April	25,676	23,296	- 2,380	2,894
May	<u>31,755</u>	<u>29,006</u>	<u>- 2,749</u>	<u>2,886</u>
Total	114,892	89,750	-25,142	27,111
				(23.6%)

(HEADING OMITTED)

Civil Action No. 1551-64

AFFIDAVIT

STATE OF NEVADA   )  
                              ) SS.  
County of Clark     )

ARLEIGH B. WEST, being first duly sworn, deposes and says:

I am the Regional Director, Region 3, Bureau of Reclamation,  
and have served in such capacity since February 1960.

I hold a Bachelor of Arts Degree in Business Administration,  
and received graduate training in Public Welfare Administration. I have  
been employed by the Bureau of Reclamation for about 23 years. Prior  
to 1960, I specialized in agricultural economics, irrigation and agronomic  
techniques and operation and maintenance in connection with irrigation  
projects in the Yuma, Arizona, area, having served for 15 years as Re-  
gional Supervisor of Irrigation. As Regional Director, my duties entail  
supervision of design, construction, operation and maintenance of all  
Reclamation projects in Region 3, including power, irrigation, recreation,  
and fish and wildlife facilities associated with such projects. I am also  
responsible for the negotiation, execution, and administration of coopera-  
tive studies, and repayment, water delivery, and power contracts. In ad-  
dition to having supervision over all Colorado River water delivery contracts  
in the lower basin, I am responsible for servicing the Mexican Water  
Treaty commitments of the United States.

Exhibit III

I am also responsible for carrying out the duties of the Secretary of the Interior under the Boulder Canyon Project Act (43 USC 617 et seq.). As part of such duties, I carried out the Secretary's direction that water delivery to users of Colorado River water in the lower basin be reduced by ten percent of their advance scheduled water orders for the last seven months of 1964. This reduction was premised upon preliminary studies of irrigation practices on all lower basin Bureau of Reclamation irrigation projects using Colorado River water.

That on July 16, 1964, I addressed and mailed a letter of the text attached hereto and designated Exhibit I to each of the addressees listed below:

Mr. Lowell O. Weeks  
General Manager-Chief Engineer  
Coachella Valley County Water District  
P. O. Box 1058  
Coachella, California

Mr. Robert F. Carter  
General Manager  
Imperial Irrigation District  
582 State Street  
El Centro, California

Mr. J. E. Blakemore, Manager  
Palo Verde Irrigation District  
Box 38  
Blythe, California

Mr. Virgil Vance, President  
Unit B Irrigation and Drainage District  
Route 1, Box 31M  
Somerton, Arizona

Mr. Edgar H. Shahan, President  
Wellton-Mohawk Irrigation and Drainage District  
P. O. Box 817  
Wellton, Arizona

Mr. Sam F. Dick, President  
Yuma County Water Users' Association  
P. O. Box 708  
Yuma, Arizona

Mr. E. E. Winebarger, President  
Yuma Mesa Irrigation and Drainage District  
Route 3, Box 32  
Yuma, Arizona

Mr. James Ferguson, President  
North Gila Valley Irrigation District  
P. O. Box 1511  
Yuma, Arizona

Mr. W. Wade Head, Area Director  
Bureau of Indian Affairs  
P. O. Box 7007  
Phoenix, Arizona

/s/ Arleigh B. West  
Arleigh B. West  
Regional Director, Region 3  
Bureau of Reclamation

Subscribed and sworn to before me this 16th day of July, 1964.

/s/ Margaret J. Price  
Notary Public

My Commission Expires:  
December 9, 1964

Exhibit I

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

REGION 3  
BOULDER CITY, NEVADA 89005

REPLY  
AD-1370. 3-100

Dear Mr. :

In announcing at Las Vegas on May 16, 1964, that he had directed the Bureau of Reclamation to secure a ten percent reduction in diversion of water from the lower Colorado River during the seven months beginning June 1, 1964, the Secretary of the Interior also announced that special consideration would be given to hardship cases or special problems which might arise in the implementation of his order. As Director of Region 3 of the Bureau of Reclamation, I was given the responsibility for making adjustments in hardship cases.

When the reduction was ordered, it was anticipated that improved water-management practices well within the capabilities of the operating entities would permit the reduction to be absorbed without hardship to individual irrigators. The Department and the Bureau remain convinced that a ten percent reduction in Colorado River diversion can be effectuated during the last seven months of this calendar year without adverse effect upon the amount of water available to farmers for irrigating and maturing growing crops. It was not, and is not, the intention of the Secretary of the Interior, or of the Bureau of Reclamation, that the reduction in diversions be applied in such manner as to result in impairment of crop yields to any individual. Standards of sound water conservation do not require that individual crop losses occur.

Each entity and individual water user must, however, continue to employ the most prudent method to utilize the quantity of water available under the reduced schedule of diversion. Obviously, additional water will be available for delivery to meet individual hardship cases if any develop. Therefore, I am asking that each entity keep in close touch with the Bureau in order that effective

and timely action can be taken to assure that individual needs are met, while at the same time overdiversion, excess delivery, and other forms of waste are kept to a minimum.

It is gratifying to observe that the reduction in diversion made necessary by these years of low runoff has met with a high degree of cooperation by contractors for Colorado River water. With continued cooperative and diligent efforts to reduce waste and maintain frugal water-use practices, I am confident that the immediate objective of the program to reduce Colorado River diversion will be achieved.

Sincerely yours,

A. B. West  
Regional Director

(HEADING OMITTED)

Civil Action No.1551-64

SUPPLEMENTAL AFFIDAVIT

Washington                    )  
                                  ) SS.  
District of Columbia        )

THEODORE H. MOSER, being first duly sworn, deposes and says:

I have already filed an affidavit in this case. I am filing this affidavit as supplemental thereto.

As stated in my original affidavit in this case the Secretary of the Interior, on May 26, 1956, entered into a repayment contract with the Yuma Mesa Irrigation and Drainage District on behalf of the United States. The contract provides with respect to delivery of water that:

"4. As far as reasonable diligence will permit, the United States will . . . divert at Imperial Dam and deliver to or for the District through the Gila Gravity Main Canal . . . such quantities of water . . . as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres situated therein. . ."

". . . subject to: (a) The availability of water for the division under the provisions of the Colorado River Compact, the Act of December 21, 1928 (45 Stat. 1057), and the Act of July 30, 1947 (61 Stat. 628); provided, however, that the quantities of water which the District shall be entitled to receive under this contract shall not, in any event, exceed an appropriate

Exhibit IV



and equitable share of the quantities of water available for the division, all as determined by the Secretary . . . " "(d) . . . Provided, however, that the maximum rate of diversion at Imperial Dam of water for delivery hereunder shall be five hundred and twenty (520) cubic feet per second; . . . "

(Underscoring added)

The United States allowed the Yuma Mesa Irrigation and Drainage District water deliveries in excess of this contracted maximum during 1961-63 because of the temporary needs of the District in connection with planting of new citrus trees, which require unusual amounts of water. However, on April 21, 1964, notice was given to the District's Manager T. R. Meyer, that these extra deliveries would not be equally available this year in view of the critical water supply situation.

The District was advised that its maximum rate of flow would be limited to 520 cubic feet per second measured at the Yuma Mesa Pumping Plant. Even this amount is in excess of the contracted capacity by approximately 26 cubic feet per second, in that it does not take into account the transmission losses (26 cfs) due to seepage and evaporation in the 20 miles of canal from Imperial Dam, the contract delivery and measuring point, to the Yuma Mesa Pumping Plant.

Except for three days during the remainder of April, and three days in May 1964, the District's Master Schedule order has been based on 520 cubic feet per second, measured at the Pumping Plant, since April

21, 1964, and water has been released from storage at Parker Dam to meet these water orders. Although the District, by its own choosing, did not pump as much as its Master Schedule order on most of the days in April and May, the water was nevertheless available.

With the onset of warmer weather, the District has pumped at or near its Master Schedule order since May 25, 1964. Indeed, the Secretary's 10 percent reduction order, which went into effect on June 1, 1964, has had no practical effect to date on the Yuma Mesa District, since the District is still ordering and pumping at the same rate that it did prior to the effective date of the order. Moreover, as shown on Exhibit 3 attached to my original affidavit herein, which shows the daily Master Schedule orders and diversions for the month of June, 1964, and as shown on the tabulation of Master Schedule orders and diversions for the period July 1 to July 21, 1964, inclusive, (attached hereto as Exhibit A) the District has been allowed to continue pumping in excess of its Master Schedule order so as to satisfy its requests for water. On June 12, 13, and 14 extra water at Imperial Dam was made available for the District; this water was not chargeable to the District's seven-month allocation of water, since there was excess water available above the amount that any district desired to take in addition to Master Schedule order that would be charged to its allocation.

Again, in July, the District desired extra water over and above its Master Schedule and was allowed to pump such water for the period July

7 through July 18 from excess water available at Imperial Dam. The District agreed that most of this extra water should be charged against its allotment with a commensurate reduction in a later month; hence 1,266 acre-feet pumped during this period was charged to the allotment. An additional 61 acre-feet was made available on an unscheduled basis and not charged to the allotment. This makes a total of 1,327 acre-feet of water which was made available during the period July 1-21 in excess of the Master Schedule order.

By way of explanation, excess water at Imperial Dam can originate from several sources. Historically, excess water at the dam is ordinarily the by-product of over-ordering and subsequent rejection of water by one or more districts, after it has been released from storage at Parker Dam. In addition, some excess water is available at the dam due to irregularities in the speed or volume of flow in the 150 miles of river channel below Parker Dam, unscheduled diversions or return flows by upstream irrigators, or storm water inflow in any of the reaches of the Colorado River watershed between Parker Dam and Imperial Dam.

In order to best utilize the flows arriving at Imperial Dam and available for diversion, and to minimize deliveries of excess flows to Mexico over and above treaty requirements, a procedure was adopted for diversion and delivery of water from Imperial Dam in order to handle the flows under the water allotment system which resulted from the Secretary's May 16, 1964 order. This procedure, dated June 10, 1964, is the method that has been and is currently followed, with minor exceptions, for the

distribution of all flows at Imperial Dam. The procedure, which was sent to all districts, is described on the attached sheet entitled "Procedure for the Diversion of Water at Imperial Dam under the Allotment System" (Exhibit B).

A recapitulation of the Master Schedule orders and the deliveries for the Yuma Mesa District for the period from June 1 to July 21, 1964, follows:

	<u>Master Schedule Order</u> (acre feet)	<u>Total water delivered</u> (acre-feet)	<u>Portion of delivered water not charged to allotment</u> (acre-feet)
June 1964	30,943	31,635	314
July 1-21, 1964	<u>21,659</u>	<u>22,984</u>	<u>61</u>
	52,602	54,619	375

In summary, the maximum rate of water delivery that the Yuma Mesa Irrigation and Drainage District would receive this year under its contract was established prior to the announcement of the Secretary's 10 percent reduction order, and the Secretary's order has not yet resulted in the reduction of this rate of delivery to the District. Moreover, the district has received water above that rate at its request at such times as extra water was available at Imperial Dam, part of this water being over and above that amount that will be charged to the District's seven-month allocation of water. In effect, the Secretary's 10 percent reduction order has not so far produced any reductions in water deliveries to the Mesa Irrigation District. Any reductions in delivery of water through August 1964, are the consequence of the April 21, 1964 cutback to 520 cfs measured

at the Pumping Plant. Even this amount still exceeds the contract terms for water delivery. Only in the last four - and least critical - months of the year is the Secretary's order likely to produce minimal reductions in deliveries to the District.

Although the maximum rate of delivery scheduled for the District this year is less than the rate at which the District received water during portions of last year, it is my opinion that with efficient scheduling of the water by the District, and proper and adequate management and application practices on the farms, sufficient water will be available during the hot summer months so that no damage to crops will result. With prudent and efficient use of water during the last seven months of this calendar year, it is my further opinion that a 10 percent reduction in overall usage can be effected without damage to the crops. Additionally, there is no likelihood of injury to any individual, as all contract water users along the lower Colorado River were informed by the Regional Director of the Bureau of Reclamation at Boulder City (Exhibit 9 to Commissioner Dominy's affidavit in this case) that no individual farmer will be permitted to suffer injury as a result of the Secretary's order, and that, upon application, water will be made available to any hardship case.

A recent inspection of the crops in the Yuma Mesa Irrigation and Drainage District, made July 22 through 24 at my direction, discloses that for the most part all crops are in satisfactory condition at the present time. No crop damage or stress from lack of water was noted on any of

the mature, producing citrus trees. In a few locations some younger, nonproducing trees showed some signs of stress and need of water at the time of the inspection; however, in most instances investigated, these lands were either beginning to receive water at the time or were scheduled for it very soon. No investigation was made to determine the reasons for these few delays in receiving water, but they could have been due to various causes ranging from lack of capacity in the ditches to poor management on the farms in not ordering water promptly enough. There is no evidence that this stress was due to unavailability of water and there have been no emergency requests for additional water. In general, it appears that operating personnel of the District are successfully handling the distribution of water within the District and that no significant damage of any sort is occurring.

The few instances of difficulty noted have been with new citrus interplantings in older citrus groves or with new, replacement citrus trees set in older groves. In such situations, the rate of delivery to the grove may be inadequate for the newer plantings. A few poor stands of other crops, such as cotton or alfalfa, were noted, but the poor condition was attributable to improper irrigation applications or other factors and not to a lack of water.

The District itself for several years has limited water use to a maximum of eight inches of water every ten days. Recently they have started enforcing this rule with resultant hardship for a few individuals.

However, this difficulty can ordinarily be attributed to poor farm management, such as an excessive weed growth which prevents efficient irrigation, rather than to a lack of water.

Nevertheless, no damage has been reported to me, and in my opinion, no District acreage is really suffering, with the exception of an occasional few young nonproducing trees. This is true, although the reduction in water deliveries to 520 cfs measured at the Pumping Plant has been in effect for over three months (since April 21, 1964). Moreover, no damage or stress whatsoever can properly be attributed to the Secretary's 10 percent cutback order, since no water reduction in fact has so far resulted from this order.

/s/  
THEODORE H. MOSER

Subscribed and sworn to before me this 27th day of July, 1964.

/s/ Mary M. McLaughlin  
Notary Public

My Commission Expires:  
February 29, 1968



AFFIDAVIT

DISTRICT OF COLUMBIA) ss.

E. E. WINEBARGER, being first duly sworn, deposes and says:

That he is President of the Yuma Mesa Irrigation and Drainage District and has heretofore submitted an affidavit in support of the District's motion for preliminary injunction;

That he has read the supplemental affidavit filed by Theodore Moser and takes specific issue with the facts and conclusions asserted therein;

That in construing the Yuma Mesa Irrigation and Drainage District contract with the Secretary of Interior dated May 26, 1956, as the same relates to the Mesa's entitlement to 520 second feet capacity in the Gila main gravity canal, all contracts of all users of that common works must be construed and taken together;

That the Gila main gravity canal is an unlined canal with a capacity of between 2150 and 2200 second feet and serves five separate water-using entities;

That in order to effectively apportion the capacities in this mutual canal, the following contract users have been awarded capacity in the canal:

Exhibit 14

	<u>Contract Date</u>	<u>Capacity</u>
North Gila Valley Irrigation District	12 May 1953	100 second feet
Yuma Irrigation District (South Gila)	23 Jul 1962	130 second feet
Yuma Mesa Irrigation and Drainage District	26 May 1956	520 second feet
Wellton Mohawk Irrigation and Drainage District	4 Mar 1952	1300 second feet
Unit B. Irrigation and Drainage District	22 Dec 1952	<u>100 second feet</u>
Total .....		2150 second feet

That the Yuma Irrigation District (South Gila), although awarded 130 cfs capacity in the Gila main gravity canal, has serviced the lands within its districts by pump water and therefore has not made use of the capacity authorized;

That the said Yuma Irrigation District will not take advantage of its capacity until January of 1965, at which time it will shift over to gravity flow water;

That the Wellton Mohawk Irrigation and Drainage District, although authorized under the Gila Project's Reauthorization Act for 75,000 acres, is presently irrigating only between 61000 - 63000 acres.

That by reason of the cropping patterns during the summer months in the Wellton Mohawk Valleys, the capacity entitlement of 1300 second feet is not used and said District rarely exceeds 1150 second feet actual capacity;

That the water rights granted the lands in the above Irrigation Districts all are for the reasonable and beneficial use of water and are not

limited by quantity limitations;

That the capacity covenants in the above contracts were inserted for the protection of the other using entities and in no way for the benefit of the United States;

That the capacity limitation in each contract therefore is a practical one and for the simple purpose of mechanically running water effectively through a structure;

That in 1961, due to the heavy planting of young citrus on the Yuma Mesa, it became apparent that the District could not get by all the time on its capacity limitation of 520 second feet during the months of June, July, August and September;

That thereupon the Yuma Mesa Irrigation and Drainage District and each of the other four using districts entered into a mutual understanding wherein the Yuma Mesa Irrigation and Drainage could use the unused capacity in the canal during these months by using such quantity of water as was reasonably required for the crop production;

That thereafter similar agreements were entered into in 1962 and 1963;

That in each of the years 1961, 1962 and 1963, the Bureau of Reclamation complied with the request of the Yuma Mesa Irrigation and Drainage District and delivered the quantities required for crop production;

That at no point did the Bureau assert that there was in any way a contract violation or that the District was exceeding its authority under the contracts;

That, therefore, by reason of the conduct of the Bureau of Reclamation, it has administratively construed the contracts in accordance with the common sense purpose of the same, to-wit, that the capacity limitation is a mechanical one and for the mutual benefit of each of the other using districts;

That so long as each of the District [sic] so concurs in the use of unused capacity by one of the five using Districts, such use is proper and in accordance with the intent and purpose of the Reclamation Acts;

That, consistent with this interpretation, the Bureau has delivered the following quantities of water in the months of June, July, August and September in the years 1961, 1962 and 1963:

	<u>1961*</u>	<u>1962*</u>	<u>1963*</u>
June	30,450	31,770	35,580
July	33,697	35,650	36,890
August	31,403	36,084	36,828
September	26,310	31,170	30,990

(\* 520 cfs x 30 days = 31200 acre feet  
520 cfs x 31 days = 32240 acre feet)

That in the year 1964, each of the mutual users of the ditch was willin [sic] to consent that the Yuma Mesa Irrigation and Drainage District might use the unused capacity once again to assist the District in overcoming this temporary condition, but the Bureau of Reclamation arbitrarily refused to honor this mutual commitment and has arbitrarily refused to honor any water order in excess of 520;

That by reason of a cool spring and early summer, the District fortunately has been able to survive under this restriction during the months of April, May and June of 1964, and by diligent use of surplus waters which were ordered but turned down by other districts;

That your affiant further takes issue with the claim of waste under the supplemental affidavit of Theodore Moser wherein it is claimed that the District has been wasting water by ordering same and then not taking delivery;

That under the physical limitations presently in existence on the Colorado River and the vagaries of weather, it is impossible for the Yuma Mesa, or any District along the River, to make full use of all waters ordered for delivery at Imperial Dam;

That water ordered for delivery at Imperial Dam is released from behind Parker Dam some 150 miles upstream;

That such released water takes approximately 72 hours to reach its destination;

That during the fall and winter months, due to the imminent peril of frost damage, it is necessary that water be available on short notice for extra application upon the Mesa;

That unless there is this additional life insurance of water available on short notice, the entire citrus industry would be constantly in jeopardy of frost during the fall and winter months;

That the Bureau of Reclamation has recognized the impossibility of correlating orders and deliveries and has therefore embarked upon an

extensive program to construct Senator Wash Dam a new dam whose sole and only function will be for storage immediately upstream from Imperial Dam;

That when constructed, the new dam will help to cut down the 72 hour time lag and thus permit closer scheduling of water. However, to impose this burden upon the plaintiff pending completion of the dam is unreasonable and unrealistic;

That during the year 1963, plaintiff, during the seven months under consideration, ordered but did not use approximately 12% of its water orders. That by reason of weather, frost danger and the reasons heretofore recited, such orders were reasonable. That, therefore, assuming the same percent of order versus use in the remaining seven months of 1964, under the Secretary's mandate, this would amount to a 22% cut in farm use, as any water ordered but not taken is deducted from the waters available for farm use.

Dated this 10th day of August, 1964.

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E. E. WINEBARGER

Subscribed and sworn to before me  
this \_\_\_\_ day of August, 1964, by  
E. E. Winebarger.

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Notary Public  
My Commission Expires:

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

YUMA MESA IRRIGATION AND DRAIN-  
AGE DISTRICT,

Plaintiff

versus

STEWART L. UDALL, Secretary of  
THE INTERIOR

Civil Action No. 1551-64

August 11, 1964

Washington, D. C.

The above-entitled matter came on for hearing on  
motion before THE HONORABLE WILLIAM S. JONES, United  
States District Judge, at 11:15 A. M.

APPEARANCES:

For the Plaintiff:

Charles F. Wheatley, Jr., Esquire

For the Defendant:

Walter Kiechel, Jr., Esquire



THE COURT: I would like to go back a minute to this matter of power storage. Now you, as I gather, say that this purpose is not to fill Lake Powell and therefore help Lake Mead for power purposes. But the Secretary, didn't he say in one of his releases, that he has got to get a dynamo in there or something?

MR. KIECHEL: There is a need<sup>for water</sup> at Lake Powell for power generation. I don't wish to be misunderstood on that point. There is a need for water at Lake Mead for power although this is incidental pretty much to the delivery of irrigation water, because if they release the water they generate power in the process. We are not saying --We acknowledge that water is

necessary at Lake Powell for power production. But this is a matter within the discretion of the Secretary. This is within his broad powers under the Boulder Canyon Project Act and the Upper Colorado Storage Project, and this is his job to fit these things together to take care of all needs, and to take care of his contractors.

THE COURT: Even though he is told expressly that he may not deprive farmers of agricultural and domestic consumption, or whatever they call it, for the benefit of power operation.

MR. NICHOL: That I submit Your Honor is an editing of the Boulder Canyon Project Act.

THE COURT: Well what does it say?

MR. NICHOL: It says that the -- Section 6 of the Boulder Canyon Project Act, that the dam and project provided for by Section 6(1) hereof, shall be used -- this is known as Hoover Dam. First the river regulation, improvement of navigation and flood control; second, for irrigation and domestic uses and satisfaction of the present effective rights in pursuance of Article 8 of said Colorado River Compact; and third, for power.

THE COURT: Well Mr. Moser let us go back to 1963 when you didn't have any reduction and the users are getting the amount of water that they normally get, and then comes a terrific hot spell and they need more water? Can they have more water? More water than they had in 1963?

THE WITNESS: Yes.

THE COURT: Up to their maximum?

THE WITNESS: Up to their maximum, yes, sir.

THE COURT: How did you handle that in 1963, the difference between what they were using and this big hot spell comes along and they need more?

THE WITNESS: If the hot spell comes unexpectedly?

THE COURT: That is right?

THE WITNESS: From the storage there at Imperial Dam we would make water available to all of the districts that wanted it, and normally in a case like that it would have to be prorated to all of the districts because there probably wouldn't be enough to satisfy their demand.

THE COURT: The Imperial Dam acreage feet would not be enough to take care of all this extra need?

THE WITNESS: There might be occasions when there would not be enough.

2D DAY

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

BARD IRRIGATION DISTRICT )

v. )

Civil Action No. 1589-64

UDALL )

YUMA MESA IRRIGATION & )  
DRAINAGE DISTRICT )

v. )

Civil Action No. 1551-64

UDALL )

Washington, D. C.

Wednesday, August 12, 1964

Before the Honorable WILLIAM B. JONES, United  
States District Judge, the hearing was resumed at 11:50  
a.m. today.

Appearances:

As heretofore noted.

THE COURT. Mr. Moser, let me ask you a question.

THE WITNESS. Yes, sir.

THE COURT. What would happen if Lake Powell  
did not reach the level that the Secretary would like to  
have it reach?

THE WITNESS. By a certain date, I believe,  
from what I remember from his news release, if I recall  
correctly, the Secretary said that, if necessary, the  
water would be drained from Lake Powell to replenish  
the --

THE COURT. No, sir; that is not the question  
I asked you.

THE WITNESS. Excuse me.

THE COURT. What would happen if Lake Powell didn't reach the water level the Secretary would desire to have it reach?

THE WITNESS. The --

THE COURT. In other words, the Glen Canyon Dam wouldn't fall in, would it?

THE WITNESS. No.

THE COURT. That is what backs up and makes Lake Powell; isn't that right?

THE WITNESS. That's right.

THE COURT. So no damage is done there.

Now what damage is done to anybody if Lake Powell does not reach the level the Secretary would like to have it reach?

THE WITNESS. I don't see that it would do any damage.

THE COURT. It wouldn't do any damage. And the purpose of raising the level of the Lake Powell dam is basically for power purposes; isn't that correct?

THE WITNESS. It is to achieve the dead storage in Lake Powell -- that is, the storage that you might term dead storage.

THE COURT. Well I assume that that is a sort of a second place to let water down, the next place for release; is that correct?

THE WITNESS. Once that level is reached, then all the water arriving at Lake Powell could be diverted on through to Lake Mead.

THE COURT. But it could still be diverted right now, the water that does accumulate; isn't that correct?

THE WITNESS. Yes, Your Honor.

THE COURT. It is desirable, however, to have the level of Lake Powell reach the desired height, but principally for the purpose of power; isn't that right?

MR. KIECHEL. If Your Honor --

THE COURT. You'll get your time later.

THE WITNESS. The benefit that would be derived from it immediately would be for power. It serves as a storage-reservoir.



THE COURT. Very well. What is your objection?

MR. KIECHEL. -- Mr. Moser's responsibilities are with respect to the Yuma area, which is several hundred miles downstream.

THE COURT. Mr. Moser has been qualified here as a man who is acquainted with irrigation and water conservation in the West, and particularly the Colorado River. And I am not going to deprecate Mr. Moser. If you desire to, you may. But I recognize him as a competent water engineer.

MR. KIECHEL. Nor do I wish to, Your Honor. I merely wish to point out, as a basis of my objection, that the overall administration of the upper and the lower basin of course was a matter confided to the Secretary of the Interior; and on delegation --

THE COURT. Oh, I know that. I have read some of the cases. It is very interesting. Now go on with your questioning.

MR. KIECHEL. And, if Your Honor please, I might say that Mr. Moser was called with particular regard to his expertise in the administration of the Gila

THE COURT. You said you wanted Mr. Moser on so the Court could be informed.

MR. KIECHEL. That is right.

THE COURT. And the Court is seeking to be informed.

MR. KIECHEL. I understand.

THE COURT. Very well. You may sit down.

MR. GREEN. How much water has actually been delivered to the individual farmers in the reservation division.

THE COURT. As much as they were entitled to. Isn't that right, Mr. Moser?

THE WITNESS. Yes. The significant thing, if I might say so, is that actually more water has been delivered to the farmers during this two-months period, even though just about the same amount of water has been delivered to the reservation division as a whole. In other words, a greater proportion of it has been delivered to the farmers than last year.

THE COURT. The Indians aren't getting as much?

THE WITNESS. Yes; it is the reservation division as a whole.

THE COURT. How is that? Why does that --

THE WITNESS. One of the main reasons is that the wasteway flow has been decreased, from approximately five per cent last year, of the total diversions, to just slightly over one per cent, for the two months.

THE COURT. Who effectuated that?

THE WITNESS. The Bureau of Reclamation, essentially; yes, the Bureau of Reclamation.

THE COURT. How did you do it?

THE WITNESS. By trying to exercise closer control over the delivery of water in the lateral systems.

THE COURT. Is this in connection also with the ordering of water, and making sure that they needed it, and if it is not needed letting it go on down?

THE WITNESS. Yes, sir.

THE COURT. In other words, what you have done, then, the Reclamation division, it has said, "Now, are you sure you are going to use it? And we are not going to give it to you unless you are going to use it" -- something like that, keeping a check on it in that way?

THE WITNESS. Yes, sir. We are still ordering

water whenever they turn in an order card for water.

But we are trying to watch it as closely as possible, to see that the deliveries are made on schedule, as they are scheduled.

THE COURT. Didn't you last year?

THE WITNESS. The water situation was not as critical or it hasn't been, in prior years. And, like some of the other irrigation districts, we didn't exercise quite as close control as we were capable of exercising.

THE COURT. But you delivered it on schedule?

THE WITNESS. Yes, sir.

THE COURT. But you probably were not as careful as to whether or not they were over-ordering? Is that what you mean?

THE WITNESS. One of the big problems, when they order water, and it is there available for them, is that then they are not ready to take it. And we are working with the farmers as closely as we can, so that they will be ready to take it. If it is not taken, the water has to go some place, and it goes out the wasteway.

THE COURT. So you feel that thus far in this growing season you have been able to accomplish something by the conservation of water in that way?

THE WITNESS. Yes, sir.

THE COURT. What was the other thing -- about  
the ditches? t

THE WITNESS. The rundown in the ditches?

THE COURT. Yes.

THE WITNESS. That is utilizing all the water  
in the ditch. If the water is stopped upstream from the  
delivery that was receiving water, then this water that  
remains in that ditch continues on down and goes to this  
farmer as part of the water delivered to him.

THE COURT. I thought you began the irrigation  
at the lowest end of the ditch.

THE WITNESS. Yes. And then up the ditch,  
the next man up the ditch is the next man to come on.

THE COURT. Yes. ....

THE WITNESS. So then the gate and check  
structure can be lowered at that point, and cut off all  
flow below that point -- in the small laterals, that is.

THE COURT. What did you heretofore do on that?

THE WITNESS. Unless an effort is made, the  
check structure gate upstream will be lowered; but at  
the same time this farm turn-out gate will be lowered  
and this water will just stand in the ditch, until it  
seeps away. Now it is drained out, to the extent it

can be, and applied to the land.

THE COURT. You close the gate earlier; isn't that right?

THE WITNESS. Close the check gate, yes, sir.

THE COURT. Which stops the flow downstream?

THE WITNESS. Yes, sir; that's exactly right.

THE COURT. And who does that? The Reclamation Service or the farmers?

THE WITNESS. For the most part, the farmers do that.

THE COURT. What about the ditch rider? Does he do that?

THE WITNESS. No. We just have one ditch rider on duty. He is in general supervision of the irrigation. But the farmers have actually made those changes normally -- unless they change from one lateral to another.

THE COURT. How this year, then, have you been able to accomplish that saving? Have you impressed on the farmers --

THE WITNESS. Yes, sir.

THE COURT. They have therefore become more careful?



THE WITNESS. The time when this next man is supposed to pick up is coordinated by the ditch rider, knowing when the man down below is going to finish.

THE COURT. With that background, in answer to the previous question as to how the farmers received more water this year than they did last -- I think that was the basic question; is that right, sir?

THE WITNESS. Yes, sir.

THE COURT. You mean what they did is they actually applied more water to their land this year because of these conservation practices than they did last year, because a lot of it was drained off in waste; is that it?

THE WITNESS. Yes, sir.

BY MR. GREEN:

Q Do you agree, Mr. Moser, that with a continuation of these practices most if not all of this ten per cent projected cut can be absorbed?

A With these practices on the irrigation system, and other conservation practices that could readily be applied to the farmland, yes, sir, I do.

## FURTHER REDIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Moser, this water that you have yet to take away from the farmers, will you in fact take it away if it would create an actual hardship?

THE COURT. He said in his letter he wouldn't. He said, "All you have to do is come around and ask me for some more water."

THE WITNESS. Yes, Your Honor.

MR. GREEN. My question will be, sir, my next question, how long after he notices that, how much leeway does he have to get the water to the crop without damaging it. That would be my next question.

THE WITNESS. It would be variable with the crops, and the age of the crops. But there would be, say, up to four days without any significant damage or damage there that would result.

THE COURT. In other words, a maximum of four days. What is the minimum?

THE WITNESS. On the age of the crop, it may be within one day.

THE COURT. In other words, he could need water within one day, and he might not need water for four days? Is that correct?

THE WITNESS. Yes, sir.

THE COURT. Very well.

## AFTERNOON SESSION

THE COURT. I want counsel to bear in mind that each side has one hour. Very well.

MR. WHEATLEY. Your Honor, I would like to move the admission, for purposes of this case, of Mr. Thaddeus G. Baker of Yuma, Arizona.

THE COURT. Mr. Baker, we are glad to have you.

MR. BAKER. Your Honor, in order to save time, I have dictated the opening statement that I would make, in memorandum form, and with the Court's permission I would submit the written statement in lieu of an opening statement.

THE COURT. Does it add anything that isn't in your briefs?

MR. BAKER. Yes, sir. The brief deals primarily with the legal arguments. The opening statement deals with the testimony which I expect to put on today.

THE COURT. Well, I suppose if this is based on facts, I had better have some knowledge of it, hadn't I, before you start putting your factual case on?

MR. BAKER. Well, if Your Honor desires, I can go ahead and make a brief statement. But we do have a number of witnesses.

THE COURT. I know you have a number of witnesses.

MR. BAKER. And I think I can develop the information

through them.

THE COURT. You just generally tell me what is in this.

MR. BAKER. All right, Your Honor. The basic argument —

THE COURT. Do you have something?

MR. GREEN. I wonder if we might have a copy?

THE COURT. Sure, if they have a copy.

MR. BAKER. Yes (handing copy to opposing counsel).

Basically, Your Honor, we take the position that the cutback, based upon 1963 uses, would be entirely unrealistic, because you don't use water on that basis. In other words, the set amount you use in 1963 has no relation to what you use in 1964; and what you use in 1964 has no relation to what you use in 1965. So initially the order is arbitrary, because our uses depend on cropping pattern. That is, each crop takes a separate amount of water. Our uses depend upon the amount of heat, and the type of soil you are in. So these things are variables, and from year to year there is rather extreme variation.

THE COURT. There is a maximum, though, that you can get, is there not?

MR. BAKER. No, sir. Our contract is reasonable and beneficial consumptive use. The limitation is as to the

number of acres.

THE COURT. That is the 25,000?

MR. BAKER. Yes, Your Honor; but there is no issue as to that fact, because we are nowhere near that limitation.

So that is the initial position, and I was going to put on briefly testimony on that. And then I was going to develop the susceptibility of the citrus crops to damage, particularly in view of the situation that exists in Yuma. Our cut, Your Honor, is not a cut on an amount which is delivered to us which would include this carriage water that you have heard some testimony on. Ours is a completely lined system which deadends. So that every drop of water that comes onto the Yuma Mesa and is used in Yuma Mesa, is used for actual farm use. In other words, there is no such thing as carriage water or waste water in our district. So that the order we place ultimately ends up on each farm.

THE COURT. In other words, if you over-order, what do you do? What happens to that water?

MR. BAKER. The over-order, Your Honor, would be not accepted at Imperial Dam. But once the water is released to us, at the pumping plant or at Imperial Dam, it has to get used, because there is no place else for it to go but to the farms.

THE COURT. That's what I mean. Suppose actually

all farmers ask for too much water. Too much water can also destroy crops, as well as not enough water can destroy crops, can't it?

MR. BAKER. Yes; there is a limitation on that.

THE COURT. Suppose that you over-order, and it comes into these concrete ditches or whatever they are, --

MR. BAKER. Laterals, yes.

THE COURT. -- then what happens to that water?

MR. BAKER. That is a day-by-day proposition, and the water master controls the order from Imperial Dam. So the actual number of acre-feet coming to the Mesa is always going to be used. And if there is water that is not going to be used, then it is not taken at Imperial Dam. So that any water that leaves that point is used on the Mesa. The ten per cent cut is not on what we order in the master schedule; but the ten per cent cut is based on our actual use in 1963. So that the ten per cent cut in our case, then, is a direct cut in farm application, and we will develop the unreasonableness of this in our testimony.

We will also show Your Honor that the offer of the Secretary, dealing through his regional directors, is of no value to us, because this system is fully concrete-lined, and the irrigation canals narrow in size. So that approximately 6,600 acres of our project are on a two-head



lateral -- one- and two-head laterals.

Now when we get the water we need for our crops during the summer months, we can take a maximum of 35 heads of water. A head of water can be a variable. In our case it happens to be 16 cubic feet per second. We can take 35 of these irrigation heads into our system, and we can irrigate 300 farms.

The Secretary has limited us to no more than 520 capacity through our pumping point, which has reduced the number of heads that we can take to 30. So we automatically have built into the system now a delay in getting farm deliveries, because we no longer have 35 going at one time; we have 30.

As the evidence is going to demonstrate to Your Honor, this problem is compounded by the fact that the system itself narrows in size. So that if we delay irrigation up above, we are adding additional time to the irrigators who are below. This has a rather explosive effect, and this is the way it works:

Assuming a crop needs 16 cubic feet of water for 10 hours. Now it takes the man 10 hours, or it may take him eight, to irrigate that crop properly, because of the factor of weather -- which is a very important factor in this particular area, because it runs up to 115, and the humidity

goes down to five to seven per cent and varies up and down. On a humid day, you irrigate faster than on a hot, dry day.

THE COURT. Because of the —

MR. BAKER. The humidity and the heat.

Now, if the first man cannot get through his irrigation in time, and has to take two additional hours, the next man down the ditch, then, isn't just punished by two-hours, because now his crop has gone an additional two hours and has dried out. This is in sandy country; so it has dried out. So instead of taking an additional two hours, he may take an additional four hours. And this goes right down the ditch. So that the last man, instead of being two hours late — it is not a uniform two-hour period — this may run to three, to four, to five, to six days.

We have been hard pressed in the past to get around our system, particularly in the summer time, with our 35 heads. That's a touch-and-go proposition. If we reduce the number of heads, we are putting the whole area in stress.

+ A citrus crop — and this will be testified to — within a period of 24 hours, under extreme weather conditions — and by "extreme" I mean extreme changes in temperature, which are not unusual — a citrus crop can be destroyed in a period of 24 hours.

You can, in that same 24 hours, under extreme

conditions, permanently impair the tree itself. A citrus tree takes approximately five years before you get any crop from it. And during that period of time, of course, you are merely cultivating and helping it grow. If you impair its growth, you destroy the whole cycle. So that instead of having a break-even proposition on the fifth year -- five to six years -- your break-even point now has been pushed.

We are not just speculating on this. We have actual cases where this has happened, and happened quite often. It is a very sensitive industry. We have it in the hands of experts, and so long as we can get the water, we will raise citrus.

THE COURT. The Yuma Mesa is pretty much or entirely citrus fruit, as far as the crops are concerned? Or that's your big crop?

MR. BAKER. Yes, Your Honor. And I might say, when the bureau designed the system, they felt it would be an alfalfa area. And of course it's sandy. Ultimately, I believe, in the explosion in the California area in the suburbs, the citrus went out there, and they found that our climate was ideally suited for citrus, because of the generally warm winters. And so we suddenly have this tremendous influx of citrus. And we now have represented on our mesa every major citrus house in the country.

So we feel the decisions just can't mechanically work for our industry, to start with. There is no way for Mr. Moser -- and we have great respect for him; there's no question about that -- there is no way for Mr. Moser to assist us and to keep us from being constantly imperiled for the balance of the year.

THE COURT. Your point is that even if any one or more of the farmers on your system came to Mr. Moser and said, "I'm the man you wrote about. I want that extra water," your system couldn't get the water to him; is that it?

MR. BAKER. That is exactly it, Your Honor.

THE COURT. Now show me your system, will you, please.

MR. BAKER. Yes. (At board:) This appears to be a small dot. Actually it is a large pumping plant. And the gravity canals run in this direction from the river, and this is our takeoff from that canal.. It goes down to this pumping plant, and then is pumped up some 50 feet up onto the mesa. It then proceeds in this direction and splits off. The A canal services this area of the mesa. The B canal goes in this fashion around this air base and takes care of this area here.

These down in here are small laterals.

Unfortunately, in view of the Secretary's order,

this is the area where the newer citrus is. And the newer citrus, of course, is far more vulnerable to this lack-of-water problem than older citrus. So our most vulnerable areas are in the lower end of the district.

There is no physical way that Mr. Moser or anyone else, once we are behind, can bring this man water and save his crop, under a situation of stress. There is no physical way we can do it. In other words, there is no way of just being agreeable, one to the other.

THE COURT. Is this now, Mr. Baker, because of the description you gave me about that very hot, humid day, and the farmer takes six hours instead of four, and therefore the laterals are in use for him; and the other man who is in serious trouble down the laterals doesn't have a chance of getting it? Is that the point?

MR. BAKER. Yes. It is a cumulative thing. The man just ahead of him is in a condition of stress, too, perhaps not as extreme as the last man; but each person is getting in the same position. So in the summer months, and with the limitations placed on us by the bureau, there is no way we can take the water they have given us, put it through that system, and not suffer damage in these summer months.

Now we have a problem in the fall which deals with

frost, and I can develop that on the testimony. I think I have outlined generally what we have here.

Mr. Smith, please.

Your Honor, if it is permissible, I would like to reserve five minutes for rebuttal.

THE COURT. Very well.

Mrs. Davis, I think the counsel has used ten minutes thus far. He has 50 minutes left. So tell him when it is 45 minutes from now.

THE DEPUTY CLERK. All right, sir.

Thereupon

DE WITT SMITH,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q Mr. Smith, you are the same Mr. Smith who filed an affidavit in this case, did you not, sir?

A Yes, sir.

THE COURT. What is your first name, sir?

THE WITNESS. De Witt.

BY MR. BAKER:

Q And you are presently the horticulturist and field supervisor for the firm of Kirchville and Wilch?

A Yes, sir.



Q And as part of your duties, then, you have the responsibility for the cultural practices of some 6500 acres of citrus on the Mesa, do you not, sir?

A Yes.

Q And you are a qualified horticulturist and have a college degree in that science, do you not, sir?

A Yes.

Q And your organization is also associated with the Sunkist organization, is it not, sir?

A Yes.

Q All right, sir.

THE COURT. Is there any question now as to this man's qualifications?

MR. GREEN. None, Your Honor.

THE COURT. Very well. I recognize the witness as qualified.

BY MR. BAKER:

Q Mr. Smith, would you tell me just briefly, so the Court may have some understanding -- and perhaps you can enlarge on some of the statements I made in my opening statement -- as to the uniqueness of our particular area as a citrus area, as opposed to other citrus areas in California and throughout the country.

A Well, one of the primary differences between Yuma



and other citrus areas in California and Florida is our very sterile sand condition that we start out with to put an orchard on. It is very low in silt and clay. It is practically hydroponics.

Q Can you tell the Court -- perhaps he is not acquainted with that word, "hydroponics" -- what that is.

A Hydroponics is the system of farming where you grow plants in water and just use wire or sand or something to hold them upright, and you put into this water all the nutrients that the plant needs.

Also we have a condition in the summer months where we have extreme changes in climate. The Coachella Valley in California and the Yuma Area are unique in this respect, in that we have very drastic changes in water requirements in a rather quickly changing period of time. We can go from 91 to 108 or 110 over night.

Q Can you give the Court some idea of the extremes in temperature range that the Yuma area is subject to?

THE COURT. From 91.6 to 120, isn't it?

THE WITNESS. Somewhat in that area.

BY MR. BAKER:

Q And the summertime temperature, I believe, each day throughout July and August it generally always exceeds 100 degrees; isn't that true?

A Yes.

Q Apply this, then, to the vulnerability which citrus has under these conditions to a lack of water.

A Well, our plants here probably wouldn't even be grown in Yuma were it not for the fact that there are not enough areas that are real warm in the winter, from a freeze danger standpoint, to be utilized for the citrus that you can sell in the United States. In other words, Yuma is one of the later places to be chosen for citrus. Because of this extreme summer heat, it isn't a comfortable place to live. So it was developed later, after the ideal areas, especially in southern California, had been grabbed up and used for other purposes. This has created a good demand for citrus from our area, and it is a very economical crop to grow, once you have learned the techniques that are necessary in that climate. But it is a subtropical plant, and it really belongs in a subtropical area. And Yuma is a very arid area that creates moisture problems. That is our main problem -- moisture management.

Q All right, sir. Now can you give us some idea, then, of the timing involved, with regard to danger to citrus? Within what period of time are you in serious trouble, sir?

A Of course, that would depend on the age of the trees and the crop, the particular variety or crop involved. But

just to give you an example of our summertime program, we have our trees that were planted this spring on five to seven days.

Q On five to seven days, what does that mean?

A Every five to seven days we will re-irrigate.

And then we would go from extremes -- once our lemon crop is set -- we are going to go there until it's set -- but once it's set, say in July, where a sudden heat spell won't knock our lemons off, we will stretch those out, to save water and also to keep down on leaching of nutrients and disease problems we get into where we over-irrigate, we will stretch these, to the large root systems, to 14 or 16 days.

THE COURT. What do you mean by "set"? When is a crop set? What does that mean?

THE WITNESS. Our trees bloom in the spring. And after the bloom petals fall, there is a small, immature green fruit there. And there is about a month to two months, as that thing sizes, where it is very vulnerable to falling off. We call that period the fruit-setting period, where the decision is made by the plant for that to drop prematurely or to heal in good. And once that period is passed, that fruit will stay until harvest.

THE COURT. Once that period is over, and the fruit stays, it is set? Is that right?

THE WITNESS. It's set. That's how we get that word.

I'm not sure I finished my --

THE COURT. I think maybe I interrupted you.

BY MR. BAKER:

Q We are drawing your attention to within what period of time are you in serious trouble in citrus.

A A five-to seven-day schedule, and the variation there would be soil type. On our best soil, which we grade as Class 2, we can put baby trees on seven days. And as long as we are not delayed more than a day and a half, we still won't receive severe damage on Class 2 soil. More than a day and a half, many times we get severe damage, where this orchard may be set back for more than a year's growth.

Now on Class 3 soil, or worse -- which the lower end of the Mesa has got more of, and it is the area where we have been developing most recently -- even a day late sometimes does us some damage, some defoliation of the tree and also feeder root damage.

Q Perhaps it would be wise to tell the Court at this point exactly what happens. What happens internally to this plant or the tree that causes the damage?

A With a baby tree, particularly, when we don't get the moisture that we should have, and even before the leaves

themselves curl up and start to fall off, or wilt severely, we start to kill the little, fine root hairs that pick up moisture and nutrients. And after you put the water back on the tree, the leaves will gain moisture right away.

There are still enough roots not killed that the leaves will come back and look normal. But if you have killed enough of these feeder roots, that tree will sit there for a long time before it puts on its next flush of new growth. I have one orchard that was wilted real bad in 1961, and you can today see the parch in terms of about half as big a tree, and no fruit yet on these small trees. And I have gotten almost half a box on the trees that were at the beginning of that irrigation.

THE COURT. This root structure that is damaged, it does come back over a period of time?

THE WITNESS. Eventually, yes, sir.

THE COURT. I see. But during the time it is in the process of coming back, and before it has come back -- let's put it that way -- the tree is really, so far as production is concerned, out of service?

THE WITNESS. We just say it's sitting there.

That's a common expression -- "just sitting there."

THE COURT. It is not producing any crops, anyhow.

BY MR. BAKER:

Q Under extremes of weather, it is the actual extreme change in weather that is more damaging than the actual temperature, is it not, sir?

A Yes, sir.

Q Under an extreme change in weather on this young citrus, how long could it go without being permanently impaired, or substantially impaired?

A It will vary according to the kind of weather that we are experiencing, naturally. But if we jump from, say, 95 or 98 and go up to 112, a day late is going to show some obvious stunting.

Every orchard has hot spots in it, spots where the sand is a little less fertile or where there is a little less organic matter. Especially in new planting this is brought about, because when this district was first developed these lower farms at the south end of that district --

Q (At board) This is the south end, is it?

A Yes. They were planted in alfalfa on two-tenths fall. And mostly now when we plant them to citrus we must re-level to only one tenth of a foot fall per hundred feet of irrigation.

THE COURT. That is the fall for the water?

THE WITNESS. Yes; that's the slope of the land.

When we do this, unavoidably we cut and we fill. We cover



up good organic matter that has been developed from alfalfa roots and alfalfa leaves, with soil that was cut to bring it to this different level. And some of the worst spots are these so-called hot spots where the trees will wilt quicker because there is less organic matter to help hold the water in the soil.

BY MR. BAKER:

Q Just so there is no misunderstanding, tell the Court what the reasonable market value is of even that type of soil on the Mesa by reason of this citrus industry.

A Well, even without re-leveling, right now it is bringing \$1500 to \$1800 an acre.

Q All right, sir.

So that we understand the mechanics of it, in your opinion would a ten per cent cut in water available on the Mesa cause immediate danger and harm to the citrus under your control and also the citrus generally on the Mesa?

A Yes. In fact, we have had damage already without the ten per cent cut starting.

Q Before you go on to that, I would like you to explain to the Court, somewhat in more understandable terms, what I was trying to tell him about the cumulative effect of the delay in order and the effect in the system itself, and how that would ultimately cause damage to you as a citrus farmer.



A Well, if we have an orchard on seven-day schedule, and we see a sudden hot spell comes, and the ground on this particular orchard is drier than it has been the last two or three times it was irrigated, when we place that order -- say it's an 80-acre orchard -- my irrigation foreman looks at the record of what it took the last two times to irrigate it. We will say it was 35 hours. He will place an order for a full head, 16 cubic feet, for 35 hours. And because of the sudden change in temperature, the orchard is drier. And I don't mean the temperature changed this morning and so it's drier; but for the last two or three days it has been warmer than it was preceding the other two irrigations. It might run 41 or 42 hours to get that orchard finished.

The next orchard down the ditch, naturally, is getting water so many hours later than what he expected.

THE COURT. Is that 41 or 42 hours?

THE WITNESS. Well, say instead of 35 it's 42.

So we are seven hours longer.

THE COURT. Are you still drawing from the ditch?

THE WITNESS. Yes. They won't turn us off, within reason, because they know that we can't anticipate exactly what it is going to take to irrigate, because of the weather changes.

THE COURT. You may, in other words, irrigate

almost four days on one farm? Is that right?

THE WITNESS. That is entirely true. I have one farm we irrigated almost six days.

THE COURT. And you start at the bottom of the ditch in the irrigation, and are working up; is that right?

THE WITNESS. Not always. It will depend on the way the farm is laid out. But generally speaking the heads, not so much my farm -- I may have a farm that I take care of, and there may be two that I don't take care of, then three in a row that I do take care of. But when I place my orders, the irrigation district rotates me in with my neighbors, not the way I ask for them but the way it will be best and fairest to everyone.

THE COURT. What I was trying to get at, Mr. Smith, does the man lowest on the ditch irrigate first, and then you work up the ditch, like I think in the Bard district?

THE WITNESS. No, not necessarily.

THE COURT. You do not.

THE WITNESS. One of the reasons that would be very difficult to coordinate is that we have different aged orchards spread all over the Mesa. We have 15-year-old lemon trees right next to baby lemon trees, and they are owned by different people. And I have a lot of 10-acre and 20-acre owners who must be treated just as fairly as a 160-acre owner.

So they are all comingled in there on the best possible schedule, and they will come right down the ditch, Your Honor, just the way it is fairest to everybody. Some of the people won't be people that I irrigate, and I will turn my head over to them until they can finish, and they will give it back to me. And then I may keep it for two or three farms, and then turn it over to some other operator who is taking care of some other farms.

THE COURT. I see. When you speak of the 41 or 42 hours, you may be irrigating two or three farms in that 42 hours; is that right?

THE WITNESS. Well, I mentioned an 80-acre farm. A good time for it would be about 32 hours, and even 35 wouldn't be bad. But if I took 42 hours, that would be excessive; that would be more than I think is right. But after two or three days of real hot weather, it could go that much on this one 80-acre farm that I take care of. Now going down the ditch about 400 acres, which would be several days later, the last farm on that ditch might be two days to three days late and really suffering. There is no way, once the whole group of orchards has started wilting, that you can speed up the process.

THE COURT. The fellow farthest down the ditch, if he went to Mr. Moser and said, "Do you remember that letter

you wrote back in May or June or July, where you said 'If you are ever really up against it, let me know, because I'll get you some water,' that man down at the end of the ditch would never get his water, would he, because you are going to get your 41 hours in first; is that right?

THE WITNESS. And then my neighbors, and it's going to work down the ditch. Your Honor, the only way I can see that he could be given that water would be to not make the cut, so that we never start out with the first guy late -- in other words, have enough water available where we can keep our schedules in line with the demands.

THE COURT. That is the 10 per cent cut you are talking about?

THE WITNESS. Yes.

THE COURT. That is, don't reduce it?

THE WITNESS. I think we are stretched out too thin to start out with.

BY MR. BAKER:

Q And this is accentuated, is it not, by the fact that we have over six thousand acres in new citrus in the lower end of the district and on the one- and two-head laterals?

A Yes.

THE COURT. What was that last thing, Mr. Baker?  
One or two what?

MR. BAKER. One- or two-head laterals, Your Honor.

THE COURT. Would you explain to me a little bit more about these heads. I thought you said there were two heads when you first spoke of it, and now we have one- or two-head laterals.

MR. BAKER. The head, Your Honor, is just a unit of measurement. We can in our system, the whole system, handle 35 heads at one time.

THE COURT. And 35 heads is what? You say it is a unit of measurement.

MR. BAKER. Yes -- 16 cfs times 35. We can handle that quantity in our whole system at one time and be irrigating various and sundry farmers.

THE COURT. So it isn't the head of the ditch -- that doesn't mean anything at all -- where it came in?

MR. BAKER. No.

THE COURT. You are talking about a unit of measurement of water.

MR. BAKER. Yes.

THE COURT. Sixteen cfs.

MR. BAKER. Right.

BY MR. BAKER:

Q Am I correct on that?

A Yes.

Q Now, must by way of illustration, you were telling me last night about one particular farm that when you got a south breeze from Mexico, a moist breeze, there was a radical departure in the time it took to irrigate that field.

A Yes. We have a 320-acre block that is down near the south end of the Mesa, and it is one of our real problem orchards. But one thing that helps us in there is any time we get -- the 320 acres is owned by a number of people, but we are farming it, and we planted it all at the same time -- any time we get a wind off the gulf, of course 320 acres is enough acreage you really get a big benefit from it. It will chop off the time by maybe 15 to 20 hours that it took to go over the whole 320. And really all the wind is doing is changing the humidity. But it allowed the water to go across that much faster, because of a damper condition in the soil.

THE COURT. When it is a very humid day -- what is this problem of humidity?

THE WITNESS. The top few inches are very dry. The water, as it passes down, is absorbed faster. Now if there is just a slight amount of humidity, the water travels faster. We are always wasting water to this extent on the Yuma Mesa, that at the top end of our run there is more water entering the soil than we need; and at the bottom end of the run we just turn it off in time to get the depth that we need.



for the age trees we are working with. The faster we can move that water to the bottom, the better. And humidity is one of the things that will help us get it to the bottom faster.

THE COURT. So the more humid the day, the faster the water will move down to the bottom?

THE WITNESS. Will travel -- will travel down to the bottom.

BY MR. BAKER:

Q Now does this explain, sir, part of the problem, from the district's standpoint, in ordering water through Imperial Dam, waiting 72 hours for it to come down, and then possibly not accepting all the water that came down the river from Imperial Dam?

A I think, if I understand what you are trying to get at there, --

THE COURT. I think maybe I can help you. What he is saying is that on a humid day the water runs faster across your land and you really don't need as much water.

Is that what you are saying?

THE WITNESS. That's right.

MR. BAKER. And there is a time lag, Your Honor, of 72 hours for the water to come down.

THE COURT. In other words, he can't tell what it



is going to be three days from now, whether it is going to be a humid day or a clear day.

MR. BAKER. Right. That's exactly it.

BY MR. BAKER:

Q All right. Now let's go to the specifics, Mr. Smith. Within the past month, has your organization or the crops you have been responsible for actually suffered physical damage by reason of a lack of water?

A Yes.

Q And how many acres, sir?

A Several orchards that I was told -- I haven't made an effort to get an exact count before I came east -- but at least three or four hundred acres of orchards have had real, substantial damage in some parts of them. This is due to the fact that for the last three summers, because we are planting very rapidly this Yuma Mesa to young trees, the system needs to be running full bore to take care of these short schedules, these five- to seven-day schedules. Eventually, when we get to 14 days, either more land can be developed or we will need less water. Recognizing this, the irrigation district has asked for more water and we have been given extra water every summer. The ten per cent cut, as I understand it, has not been made yet, as far as 10 per cent is concerned. But five heads have been chopped off, and have been chopped off for a

month or so.

THE COURT. What you are saying is that you haven't had your 10 per cent cut, but you haven't been able to get the extra water you got in other years?

THE WITNESS. Right.

THE COURT. Which would have been of beneficial use; is that right?

THE WITNESS. Yes, sir.

BY MR. BAKER:

Q Now, by reason of the fact that you couldn't get the water, did your 320 actually suffer damage, sir?

A Yes. I have gotten part of it defoliated where there are no leaves coming back yet.

Q What portion of the 320 would you say was either partially or totally damaged?

A It would just be a wild guess, because there are two turnouts. And we were running water sooner on the one turnout than the other. I would say 70 to 90 acres of the one farm was badly wilted and we are going to see a substantial difference in those trees.

THE COURT. That is since the 1st of June of this year?

THE WITNESS. Yes. It was in the first part of July.

BY MR. BAKER:

Q Translate that for the Court. Translate that into money damage, if you can.

A I think that at the end of a couple of years from now those trees will be a year behind the part of the orchard that didn't get wilted; and we have lost a year's cultural cost and whatever interest the value of that planting is worth -- probably three or four hundred dollars.

THE COURT. What is the income from 90 acres of citrus fruit?

THE WITNESS. Well, sir, that would depend on --

THE COURT. On price; I realize that.

THE WITNESS. It would depend upon the production it was in. We will say, if it was 10-year-old Valencias, we could expect 500 boxes per acre or better; and right now, the last two years, we have been getting about two dollars a box, or a little bit better -- more than two dollars a box.

THE COURT. I was really thinking about the 70 or 90 acres of the 320 acres that have been damaged.

THE WITNESS. These are baby trees. They won't be in production for five years. But now I feel it will be maybe six or six and a half years before we can jump those back to the size that they should have been.

THE COURT. Are they Valencias?

THE WITNESS. Yes, sir..

BY MR. BAKER:

Q Translating it, I believe you told me before that your estimate on the damage approximated two hundred thousand dollars. Is that it?

A Yes, sir; it can be that much. It is hard for me to say that after taking an oath, and be sure how much, until we see these trees six months or a year from now to see how much they are truly set back. I have been surprised at some orchards that wilted and came back and didn't look too bad. And I have been really surprised at a few that are still dragging along three years after they were wilted, and still don't seem to be taking off like they should.

THE COURT. You can't tell, in other words?

THE WITNESS. No.

BY MR. BAKER:

Q Let's translate one other problem. By way of background, tell the Court what our present citrus crop consists of, how much citrus and potential gross value we have from this year's crop and the crop in the making for the first part of 1965.

A We have almost four thousand acres of producing lemons. Those are five years or older, and the majority of them are over eight, because that was the first variety that

we started planting. It had the most popularity with the farmers. And the estimate last week was 2400 cars for the Yuma area. And that looks like about a three million dollar crop for this season. We will start harvesting that in September, and we will finish in the early part of January.

Q And there are other crops?

A Our tangerines and tangeloes are mostly baby trees. We only have a few hundred acres of producing trees. I would say a million to two million, depending a lot of prices. There is a big fluctuation in the tangerine market. Sometimes you can hardly get your costs out of them, and other times they are very lucrative, depending upon the Christmas and Thanksgiving seasons.

Q And are there any others?

A The Valencias, we have about seven thousand acres of Valencias, but they are mostly nonproducing. And I think this is important, because if this 10 per cent cut is carried over two or three years from now, we are going to have a lot of granulated Valencias. Right now we have only got about 10 per cent of our Valencias in production, and will have probably only about three million dollars of Valencias to market next year. By three years from now we should have 15 to 20 million dollars of Valencias to market.

THE COURT. This is stunting the growth of baby

trees, and therefore --

THE WITNESS. It is going to reflect it, yes.

BY MR. BAKER:

Q Now, will this present crop be in stress, or could it be substantially damaged, within the next six months or the period left under this 10 per cent order?

A Yes, in several ways, I feel.

Q All right. Tell the Court.

A One thing -- and it's a minor issue in a way, but it won't be a minor issue to the people who own it -- we don't have a lot of Algerians, but we have a couple of hundred acres of them. And this is a tangerine that can't stand to be dry from now until the time we harvest it, or it granulates. What happens, with this particular variety of citrus, whenever it is just slightly stricken, not even enough to be really important to most other varieties, it will dry the moisture out of the trees. It just seems to have the ability to suck the moisture from the fruit whenever it has a little need for more moisture. And then after you irrigate, these little sugar crypts will get a form, when you dehydrate; the juice of that will -- the fruit gets plump again, but it leaves these little crystals in there; they call it granulization.

THE COURT. Is that what we call "pithy"?

THE WITNESS. Yes.



THE COURT. We always thought those came from Florida.

THE WITNESS. They come from all three states, and it can be brought on by this same thing. But at any event it is very important to keep these tangerines on about six days right now, even though they are big trees that for all other purposes could go nine to 12 days now.

And tangeloes have this same problem, but to a lesser extent. And Valencias have this same problem, later in the season; I would say November through March will be the critical time for Valencias.

THE COURT. Is that next year's crop now? I thought your crop season -- I noticed in your affidavit you spoke of the 1964-1965 fruit crops. What is the harvest date of your crops?

THE WITNESS. That is probably real confusing, because our lemon crop is set in the year -- well, it is set in 1964, it is harvested in 1964 and mostly sold in 1964.

Our tangerines and tangeloes also are set in 1964 and predominantly -- well at least they don't go past February of the following year.

But our Valencias are set about the same time our lemons are; but they are not picked until a year later. They are set in 1964, but they are harvested and sold in 1965.



THE COURT. And late in 1965, too?

THE WITNESS. Well, April, May and June. And at the time we are harvesting the 1964 crop, we will have already dropped the flowers and have small green 1966 fruit on the trees.

THE COURT. A new crop budding right there.

THE WITNESS. It is the one variety we have to protect in the winter for frost for two crops, the crop that will be marketed in the spring and the crop that we hope to set in the spring.

BY MR. BAKER:

Q Tell me now about the need for water on your fields in the fall months. Is there a critical demand for water during the potential frost area?

A Yes.

Q And what is the earliest frost, to your knowledge?

A The first week in November is usually the earliest that we get, and we normally will get one the second week in November. We are surprised if we get one the first week. Usually some time between the 10th and 20th we will get the first chilling frost.

THE COURT. What does water do for frost?

THE WITNESS. A real dry tree, or dry cotton plant or any other kind, whenever its roots are stressed for

moisture, will frost down and be more vulnerable to frost damage than a tree that is in a good state of moisture.

Also, just passing water over the ground, just before a frost is going to come, will create a condition where the ground is moist and firm; and all day long this moist, firm soil -- this is the day preceding a frost -- will absorb sun and heat, and at night it will radiate it back to the dark sky. This is called radiation benefit, and it helps a lot to keep the orchard warm.

You can carry that to an extreme. We don't practice this business of throwing water on there just to get this radiation benefit, because we create other problems with root rot caused by excessive moisture. All we try to do -- and most of the other operators on the Mesa -- these problems have to be weighed against the frost damage. We try to water, and order as quick as we can when we get a frost scare, anything that is due for water within a week. But if something was just recently watered and we think it is just moist enough to get fairly good radiation, we don't want to aggravate our other problems by throwing this water in there.

THE COURT. The moist roots, in other words, are better protected from the frost?

THE WITNESS. Yes, sir.

THE COURT. Particularly with the radiation.

THE WITNESS. Yes, sir. If the tree is just weak, well, anything else. If you burn it with fertilizer, you get the same vulnerability to frost that you do if it is in stress for water. It is just one more thing that hits it, and it hits it harder, in its weakened condition.

BY MR. BAKER:

Q Within what period of time, from your experience, do we have frost on the Yuma Mesa? Within what period of time can this come on?

A We subscribe to two or three services, and the government has a good one started now for our area. And they normally will give us a day to three or four days' warning of a frost coming. But the trouble of it is that variation can kill you on water orders. So we can't allow anything to be too dry.

THE COURT. I think what Mr. Baker really wants to know is for what period, from the beginning of November, or --

MR. BAKER. Yes.

BY MR. BAKER:

Q How fast can the frost come on, in the fall months?

A How fast?

Q Yes.

A Well, as I say, we can get a one-day warning that it

is coming.

Q Now is there any way that Mr. Moser, or you, if you were in charge of this whole operation, or anyone else, could come in and make a decision and turn in extra water to you, unless the district had some water coming in on a regular basis, just to anticipate this problem?

A No, I don't think so, because our warnings are not such that I can depend on them for more than -- I must keep all our orchards moist enough so that if we only get a one-day warning, I won't have any one of my growers bolting. And if we are going to cut that and say that 10 per cent of the orchards are going to be that much drier, I don't think we could be sure we wouldn't get caught with our pants down.

Q Now one other question, and this goes back a couple of years. When we did have a water shortage in July or August a few years ago, we had almost a run on the bank, did we not, on our water bank? Do you recall that?

A This was in 1961 you are referring to?

Q Yes.

A Everyone got behind, Your Honor; so they are all thinking, "If I'm on a ten-day, and they're behind, I'll shift to eight days and that will give me my ten days." So everyone found themselves fighting against each other to get the same amount of water. In other words, it is just like that old

illustration of the two pulling against each other when they want a pail of water. And this Secretary's order will just create this very situation for us. We finally got that other straightened out. But there is no way we can fight it if everyone knows they are going to get behind under this system. And this is the thing we are scared to death of. They get panicky, and especially some of the operators who have absentee owners who are afraid the absentee owner is going to pull them for being neglectful. So the safest thing for them to do, to remain trustworthy managers, is step their water order up. I had five-days baby trees going nine days before they got their water, and it was disastrous that year. That year was the worst we have had yet.

Q All right. Now one other question: In your opinion is there any waste of water? Are the cultural practices on the Mesa in accordance with the standards you are familiar with, the best in the industry?

A I don't think there is any waste of water. I don't believe any of our neighbors are wasting it. The system is almost, except for evaporation losses, foolproof so far as wasting water is concerned.

Q You mentioned once before the element problem, the nitrogen problem and the disease problem. Tell the Court why these influence you in your selection of amounts of water.

A Well we feel, and all the other operators feel the same thing, that in Yuma we have a particular problem with this soil, because of its not being a very fertile soil, and because of our dry air we are not able to spray some of the minor elements that are required for citrus when we have to put on insecticides, like I was always able to do when I had a ranch in California, and like they do in Florida. — The humidity here just doesn't allow the leaves to pick it up, and we have very disappointing results with these minor elements.

One of the things that aggravated our minor element problem -- we have just learned of this in the last couple of years -- is the extensive use of water. The more we leach that soil, the more these things get pushed down, because there are things -- zinc, manganese and iron -- that are slowly dissolving in the soil, and they are only available to the plant when they are in a dissolved solution. Our soil has plenty of it, in what they call "locked up form." And we have found, and all our neighbors have found, in our producing orchards, that the least water we can get by with and still keep things running smoothly, the better our minor element problem is.

THE COURT. In other words, over-watering causes faster dissolution of chemicals that hurt the tree? Is that



it?

THE WITNESS. Not hurt it. These elements are needed for tree growth, and we leach them out by excessive use of water. They go on down beyond where the roots can pick them up.

THE COURT. They are helpful to you.

THE WITNESS. Yes, sir.

THE COURT. I thought you said the more water you had, you had learned it was harmful.

THE WITNESS. Yes. The idea is that the least irrigation we can get by with, the least number of irrigations, the less of these desirable units will be pushed away from the root zone. Our sand goes down about 30 feet.

THE COURT. Oh, I see.

THE WITNESS. And our trees only feed in the top three or four feet. An excessive use of water just runs these things right out.

THE COURT. And when they dissolve, of course they go down.

THE WITNESS. Yes, sir.

THE COURT. But when they are in place, so to speak, they are there for the trees to live off of?

THE WITNESS. Yes, sir.

BY MR. BAKER:



Q And in our climate you cannot artificially put these back in the soil?

A We just have a very difficult time, and we don't know the answer yet. We are still working on it, for ways of different types of sticker spreaders that would make the trees pick up some of these things through the leaves, like we are able to do in California. But we just don't have the humidity for good response to those feedings.

Q All right. Now let me ask you one more question before we close here: What is the problem on disease by virtue of excessive use of water?

A Our particular citrus planting in Yuma utilizes a root stock known as the rough lemon, almost exclusively. It is the best root stock for sandy soil. It is a very deep-rooting root stock, and it has many, many good characteristics. Diseases are a minor problem with it. It is not susceptible to a number of the virus diseases that some of the other root stocks are. But the one thing that it is susceptible to, and which is a problem in Yuma, is a fungus disease which eats the bark around the trunk. This is not normally a desert problem, because this fungus requires humidity and moisture to be active. Normally the dry air is enough to kill it. In fact, one of my control measures, when I have a sick tree, is to cut a limb out on the south side and pull all the accumulated trash away

from the trunk so that the sun can dry that area out. And that is one of the best control measures we have. The Yuma area didn't have this problem. It's a new development. The majority of our acreage that's on this rough lemon root stock is less than ten years old. And it seems to be a disease of trees after they get a full skirt and a lot of shade, and a lot of trash has accumulated underneath the tree. One of the best control measures we have got to keep this down is to keep the water down. In fact, my company right now is removing, by building borders, a big area around every older lemon tree so that no water can enter the trunk area. And this is another reason why we use the least water possible, because these problems can become very important. I have lost almost 400 trees in one 160-acre block.

Q Let me ask you this: These practices you have mentioned, they are in common use in the Mesa on the other groves, are they, sir?

A Yes, I believe so.

MR. BAKER. I believe that is all, Your Honor.

THE COURT. In other words, you have been testifying here about the Yuma Mesa and particularly, I assume, about your own problems and experience. Is what you have testified to, would you say, common to the whole Mesa?

THE WITNESS. Yes, sir, generally speaking.

BY MR. BAKER:

Q In fact, some of the problems, I assume, would be the same as the Bard Irrigation District, would they not, sir?

A Yes, except their soil is somewhat different.

Q But there is citrus on the Bard area, is there not, sir?

A Yes.

MR. BAKER. No further questions, Your Honor.

BY MR. GREEN:

Q On the average, how many acre-feet per acre do you apply to the lands that you manage?

A For irrigation?

THE COURT. What is your objection?

MR. BAKER. I don't see that that is material, Your Honor. That question depends upon so many different factors that it is really of no benefit to the Court, whether you use five, six or seven. That depends on the soil conditions, the particular position of this farm.

THE COURT. Now you know Mr. Baker's answer. What is yours?

THE WITNESS. That would depend on the age of the tree, which the site will determine how much water.

You are talking about per year, or per irrigation?

BY MR. GREEN:

Q Per year.

A That will depend. You take our largest lemons, where nearly all of the ground is shady and there is very little of the ground that the sun evaporates moisture from. And also these trees, except during the set period, are normally on a two-week or longer schedule. Those trees will get by with somewhere between eight and 11 feet; and the variation there is the soil classification, generally. Also the fall of the land originally.

Q Are there any instances of your applying more than 11 acre-feet per acre?

A Well, I haven't finished.

Q Oh.

A That would be your oldest trees, which is also your least water per acre.

And I can give you the other extreme, to take a baby orchard. For a full 12 months -- normally it would be planted in March -- the water we would use from, say, March to March, the full 12 months, if it is Class 3 or worse, could run as high as 20 feet. But that would be the extreme in the other direction.

I think generally most baby orchards would be 14 to 16; and then they will keep going down until they reach

the age of seven or eight, about nine to 11, depending upon the soil type.

Q Twenty feet would be 240 inches per acre during the year.

A If you are on Class 3 and have to irrigate it every five days, from March until November, you can put an awful lot of water on Class 3 soil.

Q You began your testimony with a comment on the uniqueness of this irrigation district. Is not one way in which this district is unique the quantity of water used per acre per year?

MR. BAKER. I object again, Your Honor. That is irrelevant and incompetent. The Congress decided to build an irrigation project here; and if it takes so much water to irrigate it, that's it.

THE COURT. The question goes to beneficial use -- isn't that what you are going to?

MR. GREEN. Sir?

THE COURT. Isn't that what you are inquiring about, how much water is needed at this particular mesa, from the point of view of the beneficial use, and that that is one of the unique features of it, that it has been taking a lot of water?

MR. GREEN. Well, I merely wish to point out that

it has been taking an awful lot of water.

THE COURT. You are not willing to concede that it is for a beneficial use; is that it?

MR. GREEN. Not in its entirety, no, sir.

THE WITNESS. Your question is is that a unique feature of this district?

BY MR. GREEN:

Q Yes, sir.

A Yes. Coachella is a similar district. Certainly any soil areas along the coast of California -- which is primarily the only thing that I can equate Yuma with, because that is where the rest of my experience is from -- they only use three to five feet on those heavy soils. But we get winter rains all winter over there. I don't know what the rain, added to the irrigation water, would come to; but I'm sure it would be less than Yuma. Yuma and the Coachella Valley probably use more water than any other citrus district that I know of. But I don't know of a citrus district that has over 100-degree temperatures all summer, either, except those two.

Q You point out in your testimony that during the last three years there has been an unusually large amount of young citrus planted. That is correct, is it not?

A Yes.



THE COURT. Do you know whether or not in your contract there is any maximum amount of water you can have?

THE WITNESS. No; I never heard of a maximum. I know what our minimum is. and I know we buy the excess above the minimum, cash, as we use it. Normally I have to let an accountant in our office know how much money, how many feet we want to buy, for the next 30-day period, when we get into excess.

BY MR. GREEN:

Q You say you buy, cash. From whom do you buy?

A The irrigation district.

Q You buy from the irrigation district. I say, are

you aware of any limitation on the amount of water available to the irrigation district, under its contract with the government?

A No, I am not. I am not a member of the board. I don't know too much about the operation of the district.

Q Will you comment on the advisability of planting to citrus these large areas of land, if there were -- let me ask you this, hypothetically -- if there were such a limitation on the amount of water which by contract the district has a right to receive from the government, would it be sound economically to plant to citrus large areas which might not be able to receive enough water?

MR. BAKER. I object to that, Your Honor.

THE COURT. Don't answer that question.

You are just saying, "Do you think it is advisable to plant trees when you have a limitation on your water?" How much is the maximum?

BY MR. GREEN:

Q Well, if I were to ask you, if the maximum --

THE COURT. "Assuming that" --

BY MR. GREEN:

acre-

Q Assuming that the maximum/feet of water you could receive, that the district could receive under its contract, during the months of July and August, during the hot months,

would be approximately 31,000 acre-feet, would it be sound, economically or in any other way, to plant citrus requiring more than 31,000 acre-feet of water in the month of July or August?

A Well obviously it wouldn't be sound if you couldn't receive the water that you need for the acreage you are putting in. But up until about two months ago we have always been able to get what we needed to supplement us through the hot period. Now how they got it, I don't know; or where it came from, I don't know.

[By Mr. Green]

Q You have said that if you received ten per cent less water you will be damaged?

A Yes, sir.

Q That's you personally as an irrigator receiving water from the district?

A Yes, sir.

Q You don't know, or do you know -- or at least tell me if you don't know -- if the district receives ten per cent less water, will that necessarily result in less water delivered to you?

A As far as I know, it will. I assume we get our proportionate share. I know we do, because I represent more than a hundred different owners. And I'm sure the water is

distributed equally, as fairly as possible.

Q Are there practices within the district which could be improved, which would enable them to utilize more efficiently the water they get?

A I don't know of any. I think the district does a wonderful job.

THE COURT. If it could stop evaporation, that might be one improvement.

THE WITNESS. It's about the only place left that they could cut down. I don't know of any leaks they have, or anything.

BY MR. GREEN:

Do you think, or in your opinion could the district, by the utilization of wells, recover water which at the present time is absorbed or goes into the ground?

MR. BAKER. We object to that, Your Honor. That is not a proper question in this law suit. We are relying

on the rights granted us by Congress to reasonable beneficial use from storage in Lake Mead of the Colorado River water.

Now he is asking whether we should develop wells, in lieu of this water. That's not the issue. We have a right to this river water.

MR. GREEN. The point is that beneficial use of the water delivered to the district might involve also the maximum utilization of the water, rather than letting it drain away.

MR. BAKER. If Your Honor please, on a preliminary injunction this year, we can't run out and dig wells at this time.

THE COURT. Mr. Green, we are not going into that. We won't hear anything on that.

MR. GREEN. All right, sir.

BY MR. GREEN:

Q You have stated that you are not on the board of directors of the district, so you are unable to tell us whether or not a ten per cent reduction in delivery to the district would necessarily result in a ten per cent reduction to you; is that correct?

A I assume it would. We are farming a third of their acreage. They are going to have to give it to somebody.



They can't hold it off of us.

Q You assume, but you don't know for sure?

A No.

BY MR. BAKER:

Q You stated to me, when you arrived in Washington, that actually if you cut the delivery to a farm by ten per cent, the net effect of that cut would be to actually increase water use?

A That's right.

Q Can you explain that to the Court?

A Well, the later that you get -- it's a little confusing -- but if you get an orchard two or three days late, by this cycling build-up thing, you use more water to get it wet that time than you would have used, quite a bit more than you would have used, if you had gotten it the two days sooner. Then, the next time around, if you are right on time you will use the same. But you have a net loss of the water you used because you were late.

THE COURT. You have more soaking to do?

THE WITNESS. Right. It's just drier than it

should be.

BY MR. BAKER:

Q If you take that through the whole mesa, then, the ten per cent cut is actually going to aggravate and require more water than if the Secretary's order were not in effect; is that correct?

A Right.

THE COURT. It is Mr. Baker now.

MR. KEECHEL. I'm sorry; but this goes to their challenge to the 10 per cent order, that because it is temporary, it's therefore illegal. And I'm not able to say what the Secretary's program for management of the Colorado River is for 1965. But it seems to me that it is quite evident, from the things that have been said, and of the needs dependant upon the river, that a new era of water management is coming in, and that 1965 will see conservation practices continuing.

And I think it is clearly evident, from what has been told the plaintiff Yuma Mesa Irrigation and Drainage District, in April of this year, that in view of the water situation and other good and sufficient reasons, their contract

limitation will be enforced next year.

THE COURT. All right. Now what are you going to do with the ten per cent? Are you going to apply that to the 520?

MR. KIECHEL. Well, actually the ten per cent, they're below the ten per cent on the 520. That is, ten per cent doesn't cut them in the hot summer months, as much as the 520.

Now it may have some impact in the latter years, the latter months of the year, that is, the ten per cent.

THE COURT. And it may go less than 520 in the latter months?

MR. KIECHEL. Well, they're not pumping to capacity in those years. Their problem is the hot summer months.

THE COURT. I realize that. But, I mean, what you could do, then, is give them the 520 during the hot summer months, and then effectuate the ten per cent cut in the cooler months, by being ten per cent less than 520?

MR. KIECHEL. Well, of course, this ten per cent is a target and an objective. I'm not sure that it's going to be effected.

THE COURT. It came out of a pretty authoritative mouth, the Secretary of the Interior.

MR. KIECHEL. But qualified, Your Honor, from the

outset, that no individual was going to be hurt.

THE COURT. How are you going to help a fellow down at Yuma Mesa who can't get any water down there because another fellow is watering for 41 hours?

MR. KIECHEL. Well, Your Honor, the capacity of the project, which is what they are being delivered at this time, is their main limitation.

THE COURT. Are you meaning to say now that Mr. Moser's letter, or the Commissioner's letter, or whoever wrote the letter to Yuma Mesa, that he really wasn't talking about the particular farmer getting the water, but he was talking about the Yuma Mesa itself?

MR. KIECHEL. That's right. They have a capacity in their system, not only a contract capacity --

THE COURT. Now wait a minute.

MR. KIECHEL. Yes, sir.

THE COURT. There is a fellow on the Yuma Mesa who is really suffering, who needs water badly, and he gets in touch with Mr. Moser. What does Mr. Moser say? "Well, I don't deliver any water to you, even in an emergency. I'll deliver it to your Yuma Mesa Irrigation District."

MR. KIECHEL. It will go through his district. And if Mr. Moser is satisfied that it is a hardship, the water will be made available.

THE COURT. And when he makes it available, who is he making it available to? The district?

MR. KIECHEL. To the district, yes, sir.

THE COURT. And whether the district turns it over to the man down at the end of the line, that is up to the district? Is that right?

MR. KIECHEL. That's right.

And I want to take specific issue with this statement in Mr. Baker's opening statement, a copy of which he handed to me, that the contract limitation was to apply so as to prevent the alleviation of hardship. That is not the case. Mr. Moser will testify that if there is a hardship, and if additional water is necessary, it will be delivered, notwithstanding that the contract limitation of which they were apprised in April would be enforced this year is exceeded.

THE COURT. Let's go up this river a ways. What do you say about Lake Powell, and raising the level? How are you going to irrigate the upper basin from Lake Powell?

MR. KIECHEL. Well, if Your Honor will permit me, what Lake Powell has to do with either of these plaintiffs is a mystery to me.

THE COURT. Well it has this much of interest to you, sir, that I am interested in knowing what your answer is.

MR. KIECHEL. I'm trying to be responsive.



THE COURT. Well, go ahead.

MR. KIECHEL. The Colorado River storage project, which Your Honor was cited this morning, says that in order to initiate the comprehensive development of the water resources of the upper Colorado River basin, for the purposes among others of regulating the flow of the Colorado, storing water for beneficial consumptive use, making it possible for the states of the upper basin to utilize consistently with the permission or the provisions of the Colorado River compact, providing for the reclamation of arid and semi-arid land, the control of floods, and for the generation of hydroelectric power as an incident of the foregoing purposes, the Secretary of the Interior is authorized to -- and he is authorized to build Glen Canyon and Flaming Gorge and Navajo Dam.

This is for the upper basin development, Your Honor, under a separate statute. These people's rights stem from their contract under the Boulder Canyon Project, which is the project for the lower basin. And true the Secretary of the Interior administers both -- and this is what I was trying to say as to the unitary management of the whole river -- but if there is some violation in the upper basin, or in the basin as a whole, under section 620(m) of this same statute, the Colorado River storage plan, the Secretary is suable for violation of rights, but by a state of the basin, and in the

Supreme Court of the United States.

THE COURT. How is the public interest adversely affected if Lake Powell doesn't fill up this year, or they don't get it to the level? How is the public interest affected?

MR. KIECHEL. The public interest is affected because they are building a project under this statute for the development of the upper basin, for the control of the river and for these other various purposes, as authorized by Congress. And it is desirable that there be enough water there to maintain the minimum power heads so they can generate power, so that they can pay back the costs of the project.

THE COURT. What do you say about section 620 (f) of 43 United States Code, that neither the impounding or use of water shall preclude or impair the appropriation of water for domestic or agricultural purposes?

MR. KIECHEL. I say, Your Honor, that that provision has not been violated, because the plaintiffs here are receiving their contract entitlement; and that the contracts between them and the United States --

THE COURT. But they may not be before the year is over.

MR. KIECHEL. As a matter of contract right, Your Honor, I don't believe --

THE COURT. On a reduction of ten per cent?

MR. KIECHEL. No, sir. No contract, no right, is going to be infringed. And of course if it is, they have an adequate remedy at law. But we don't admit that there has been any breach of contract, and I don't think there is going to be any. And the administration of the river necessarily includes the balancing of all the interests and taking care of all of them, and without infringement on any.

THE COURT. How would the public interest be hurt if a preliminary injunction is granted and you went on to a trial of the issues in the fall? How would the public interest be hurt?

MR. KIECHEL. Because it would impair the general conservation program that has been instituted by the Secretary, and which has caused substantial savings, and the saving of water in Lake Mead that is available for the lower basin contractors, including the plaintiffs in these cases. And what the plaintiffs are asking Your Honor to do, --

THE COURT. If I am willing to accept the government's position -- talking about Bard for a minute, -- that the beneficial use is being satisfied by this ten per cent reduction, because the farmers have been wasteful heretofore, <sup>if</sup> and now/they will settle down and be good husbandmen, they will get their full beneficial use -- I have to accept that,

don't I, that the ten per cent cut in Bard is going to be sufficient for them, under the beneficial use?

MR. KIECHEL. And in our judgment it will be. And if it is not, then the ten per cent cut won't be made.

THE COURT. But I do have to accept that, to find out there is a proper beneficial use, that they have been wasting water heretofore, and now by properly husbanding their resources they can use the water with a ten per cent reduction and still have all the water they need for beneficial use?

MR. KIECHEL. Yes; that's our view of the matter, Your Honor.

THE COURT. Now so far as Yuma Mesa is concerned, I have to conclude that the irrigation district is receiving a maximum of its water under its contract right, and actually 26 feet more, at least as far as the Imperial Dam; that coming out of there they have 26 feet more than the maximum required. And you claim they have been wasting it?

MR. KIECHEL. Yes. We think with good practices they will be able to effect savings there. But their problem, which I think they have faced up to -- at least I have heard statements to that effect -- is they recognize this contract limitation is something they have to live with, and they are going to have to internally -- by conservation and by rotation and perhaps by different cropping patterns -- live within

their contract.

I will call Mr. Moser, if Your Honor please.

Thereupon

THEODORE H. MOSER,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Moser, you administer the water delivery contract with the district, in connection with your official duties?

A Yes, sir, I do.

Q During the course of the month, through your interpretation of the contract as imposed upon the plaintiff, on April 21st of this year, how much water in excess of their strict contractual rights do they get?

This is during the course of a 31-day month, proceeding at continuous flow at 520 cubic feet per second, at the pumping plant.

A That would be a quantity of 1599 acre-feet in excess of the contract.

THE COURT. 520 cfs is how many acre-feet, you say?

THE WITNESS. Oh. 520 cfs would be 31,974 acre-feet.

THE COURT. Now how do you get that excess?

THE WITNESS. And 494 cubic feet per second for 31

days would amount to 30,375 acre-feet -- the difference being 1,599 acre-feet.

THE COURT. How do I get this last figure here, 494? Where does that come from?

THE WITNESS. The 494 is 520 less the seepage losses in the Gila gravity main canal attributable to their flow of 26 cubic feet per second. It is 520 less 26.

THE COURT. Oh, they didn't get the 520 plus 26 when it left the Imperial, then? They got 520 when it came down to their project, and it became 494; is that it?

THE WITNESS. That is what they are entitled to under their contract, which would amount to 494 at the pumping plant.

THE COURT. Oh, I understand. As you construe the contract, the 520 is at the Imperial Dam?

THE WITNESS. Yes, sir.

THE COURT. And in the flow down to their project they would lose 26 feet by seepage and evaporation and so forth? Is that the point?

THE WITNESS. Yes, sir, approximately that.

THE COURT. All right.

BY MR. GREEN:

Q But, as a matter of fact, at the pumping plant they are permitted a flow of 520 cfs; is that right?



A Yes, sir.

THE COURT. Wait a minute, now. They are entitled to it?

MR. GREEN. No, sir. As a matter of fact, they receive it.

THE COURT. Oh.

THE WITNESS. Since April 21st of this year.

BY MR. GREEN:

Q Over and above this 1599 acre-feet, which as a matter of course you deliver them in a 31-day month of continuous pumping, during the month of July, just ended, how much water in excess of the contract requirement did you deliver to the district?

A In addition to the 520 at the pumping plant, they also received 1590 acre-feet of water during July of this year.

THE COURT. Why?

THE WITNESS. At their request for extra water.

BY MR. GREEN:

Q How much, then, for the month of July, over and above their strict contract requirements, how much water was delivered to the district?

A 3,189 acre-feet.

Q I direct your attention to the --

THE COURT. Just one minute, please.



What you are saying, I gather, then, they got their 520 feet during July, and they got 1590 acre-feet in addition. How many is that in cubic feet per second, the 1590?

THE WITNESS. It would amount to approximately 26 cubic feet per second continuously for the month. But they didn't receive it continuously. It was as they requested it, more or less.

THE COURT. But it averages out at 26 additional cubic feet per second for the month?

THE WITNESS. It averages out very close to 26 cubic feet per second continuously.

THE COURT. Go ahead, Mr. Green.

BY MR. GREEN:

Q I direct your attention now, Mr. Moser, to the ten per cent cut. What was cut by ten per cent with respect to this district?

A The overall quantity for the last seven months of 1964.

Q And what was that based on?

A It was based on scheduled diversions for that same period.

Q And in turn what were the scheduled diversions based on?

A Originally it was based on last year's usage during

that same period. There was a revision, an upward revision, as far as the Yuma Mesa district was concerned.

THE COURT. Why was that? Why was there an upward revision?

THE WITNESS. They raised an issue that because of an abnormally high rain during September of 1963, that their usage during that month was less than normal. The scheduled diversions for this year reflected pretty much the use during 1963, and consequently they felt that this was not a normal amount of water to receive, particularly during September. So at their request, and in line with what Secretary Udall said at Las Vegas on May 16th, they requested that their amount for the seven months period be an average of 1962 and 1963, with September 1963 raised to the same amount as September 1962 — in other words, to compensate for the lower usage during September of 1963.

THE COURT. They sort of had water in the bank which they didn't use in September, and felt they should get the advantage of it this year? Is that the idea?

THE WITNESS. Yes, sir.

BY MR. GREEN:

Q In 1962 and 1963 did the district divert more than it was entitled to under the contract?

A Yes, sir, it did.

Q So then the cut which has been made by the Secretary is not ten per cent of the amount they are entitled to under the contract, but ten per cent of the amount of water they used in 1963 as adjusted eventually in your letters?

MR. BAKER. Your Honor, we object to that legal conclusion.

THE COURT. You object to what?

MR. BAKER. That is just a legal conclusion.

MR. GREEN. Your Honor, that is not a legal conclusion.

MR. BAKER. It is a ten per cent as imposed on usage in 1963. Our legal right is for the reasonable beneficial use under the Gila projects act.

THE COURT. You'll get your innings.

Mr. Reporter, read that question, please.

(The last question was read by the reporter.)

THE COURT. I think you had better restate your question.

BY MR. GREEN:

Q The question is, then, the reduction of ten per cent imposed by the Secretary on May 19th, 1964, is not a reduction of anything set forth in the contract, is it?

A No; it has no bearing on the contract.

Q What has been reduced by ten per cent by the

Secretary's order?

A The overall amount to be diverted for the last seven months.

Q Which in effect is saying that the amount they may divert for the last seven months of 1964 is going to be attempted to be ten per cent less than the amount diverted during the last seven months of 1963?

A Yes, sir.

THE COURT. Which exceeded the 520 cfs?

THE WITNESS. At a rate greater than 520 cfs during several months.

BY MR. GREEN:

Q In your opinion, Mr. Moser, will this reduction in the quantity delivered to the district during the last seven months damage the crops growing in the district?

A In my opinion it will not damage the crops in the last seven months. I mean, the reduction during the last seven months of this quantity need not damage the crops.

Q Will you tell us how this can come about?

A In my opinion there are several conservation practices that could readily be put into effect during this present growing season. There are others that could be put into effect during the winter; but I won't go into those here.

First of all, and particularly on young trees, to

avoid irrigating all the space between the trees, borders could be built up, or furrows dug down the rows of trees, to advance the water more rapidly and prevent the spreading out over the whole area, because the root system of young trees is not very extensive.

Secondly, by clean cultivating the fields they will allow the water to advance more rapidly, and thereby use less water. By clean cultivating, I mean keeping the weeds cleaned out of the fields.

Thirdly, the farmers could irrigate more closely to the crop needs. There are some farmers that follow a practice of irrigating by the calendar rather than by the actual crop needs.

And the fourth point is that I believe that there could be considerable improvement in the supervision and training of the irrigators themselves. Many times an owner or manager doesn't watch the irrigations closely enough, and quite often this results in over-application of water, broken field borders, --

THE COURT. Broken field what, sir?

THE WITNESS. Borders. The mounds of earth around the field to create a basin that is flooded -- broken field borders, or the spreading of water, which is a wasteful practice.

BY MR. GREEN:

Q If it should nevertheless appear that some crops in this district are in distress, would you be able to supply water in these cases, even though it might exceed the 520 cfs limitation?

A Yes, I would.

Q And how long would it take you to get the water to the district?

A From Imperial Dam to the pumping plant is a matter of about six hours' travel time.

THE COURT. Mr. Moser, I suppose you have no way of determining what is going to happen or how long it is going to take that water to get from the pumping plant to the particular farmer in distress. Is that right?

THE WITNESS. It depends upon how far that particular farm is from the pumping plant. It's a matter of a few hours there, too.

THE COURT. And it also depends upon who is in between that farmer in distress and the pumping plant? If somebody else is irrigating on that same lateral, he may not like to give up his right to continue his irrigation?

THE WITNESS. Yes, that's a consideration, if it's on a small lateral. In operating the system, if one particular farm is in distress, the first thing that is done is that the



ditch rider, when it is called to the ditch rider's attention, he will see if this other person will not give up the water to satisfy the needs of the one that is in more critical need of water. The farmers are quite cooperative in that respect, because they might be the one suffering next time.

And the same thing is true in the Yuma Mesa, that when a farmer makes his needs known, the irrigation district makes an effort to get him water as soon as possible, by shifting heads around and providing the water to the areas in the most critical need.

THE COURT. I understand from Mr. De Witt Smith that five of these heads have been shut off and terminated; that anyhow they are not available. Now what do you say with respect to the problem of getting to the farmer in distress, in light of that? Does that put a greater burden on the other heads, as far as the normal irrigation is concerned?

THE WITNESS. This need for this extra water, that has not been a continuing need this summer. There have just been certain periods of time when they have advised us that they needed extra water. And when they did advise us, water was made available for them.

THE COURT. Is that everybody in the whole district, do you mean, or just individual cases you are speaking about?



THE WITNESS. It was the district that advised us that they had a need for water; that the district in general was getting behind in their irrigation rotation.

THE COURT. We are talking about the man now who is down at the end of the ditch and he is in dire need, but because of the lack of the five heads everybody on that lateral is behind, is three or four days behind, and they are not going to let this water get to the man who is in distress. What about him?

THE WITNESS. First of all, I don't think they have reached a situation where in general they are four or five days behind. But with 30 or 35 heads, it is not too difficult a job to switch the heads around, to find an area that is in less critical need and to divert the water to that area that has the more serious need.

I think Mr. Smith testified that it is done all the time, and I concur with him that it is done all the time, whether or not there is any restriction on flow. That's good management as far as irrigation is concerned, and they do follow that. They switch the irrigation heads to serve the most critical needs.

MR. GREEN. Your Honor, I have no more questions.

THE COURT. Mr. Baker.

## CROSS EXAMINATION

BY MR. BAKER:

Q Mr. Moser, you came to the city of Yuma in September of last year, did you not, sir?

A Yes, sir.

Q So your entire experience, then, on the summer heat, or the conditions in Yuma, are from September of 1963 until the present time?

A Yes.

Q In other words, you have no knowledge or past experience of this district, what we have done in 1960, 1961 and 1962; your only experience that you have gotten is since you took over?

A I have the knowledge of the records that are maintained by my office.

Q Yes. And now tell me, Mr. Moser, do you maintain on your staff a horticulturist who is familiar with the needs of citrus and citrus management?

A I do not have a horticulturist on my staff. That's not a responsibility of my office.

Q But if we are going to be in stress, we have to have some knowledgeable person tell us that these people are in stress and they are entitled to water. Who in your office do you have that can tell us, in a knowledgeable way, that

yes, we are in a hardship case?

THE COURT. I thought you were going to tell them when you were in distress.

MR. BAKER. That's right, Your Honor. But the judgment that has to be made is not up to us. It is their judgment whether a hardship case exists or not, sir.

THE COURT. In other words, a man who is in distress tells Mr. Moser's office that "I'm in distress." And then you are asking who over there is competent to say whether or not the man who claims he is in distress is in distress? Is that what you are saying?

MR. BAKER. Yes, Your Honor.

THE COURT. If you get a distress signal, who determines in your office that the man is really suffering and is in distress?

THE WITNESS. In Mr. Coutchie's branch, he and several of his employees are quite familiar with water needs of crops in the area.

THE COURT. That is separate from your office, is it?

THE WITNESS. No, sir; they are my employees.

THE COURT. They are part of your staff?

THE WITNESS. Yes, sir.

BY MR. BAKER:

Q These people are not trained horticulturists, are

they, Mr. Moser? In other words, they don't have the background, for instance, of Mr. Smith, as to when a crop is in distress?

A They do not have a college degree in horticulture.

Q The determination, though, as to what a need is is up to you, is it not, sir?

A I rely on the technical information furnished by my staff. And I believe we have established this morning that Mr. Cutchie is qualified in this regard.

THE COURT. He is qualified to me.

MR. BAKER. Not to me, sir. I haven't had him in this case.

THE COURT. You will have an opportunity later to cross-examine him. Right now he is qualified to me.

MR. BAKER. If they will call him.

BY MR. BAKER:

Q Now is it your position, Mr. Moser, --

THE COURT. Do you know anybody up there in that Yuma Mesa Irrigation District who never went to college, Mr. Moser?

THE WITNESS. Who didn't go to college?

THE COURT. Who didn't go to college.

THE WITNESS. I'm not qualified to answer that, sir.

THE COURT. I mean, don't you know anybody on the

district who might not have gone to college?

THE WITNESS. Not specifically. I'm sure there are some, yes, sir.

THE COURT. I was going to say, is it necessary to have a degree in horticulture, Mr. Baker, up there in that Yuma Mesa district?

MR. BAKER. Well, Your Honor, --

THE COURT. It must be the finest bunch of brains in the country sitting up on top of one mesa.

MR. BAKER. No, Your Honor, --

THE COURT. You are not making that point, sir.

MR. BAKER. No, I'm not saying that, sir. I'm saying that the decision as to when we need water should be at the hands of the man who knows best, and that's the farmers.

THE COURT. Don't you think that a man who has really learned the hard way probably knows as well as the fellow who has been in the laboratory? In other words, I imagine any one of those people up in the Yuma Mesa can go out and say "That tree is going to die."

MR. BAKER. Right. And that's where I think the decision should be placed, in their hands, not in the hands of a government officer.

THE COURT. Well that, of course, is a universal cry. They don't like government regulation. But go ahead.

BY MR. EAKER:

Q Now, Mr. Moser, Mr. A. B. West is your boss, is he not, sir?

A Yes, sir.

Q And were you present when he declared to the board of directors that the only situation of hardship that would be considered was within the 520 limitation?

A No, sir; I don't remember that statement.

Q You were not present at the meeting with Mr. West not more than three days ago when he informed the Yuma Mesa board of directors that the only hardship case he would recognize is within the 520 limitation?

A I don't recall.

Q You didn't hear that?

A I do not recall wording to that extent, no.

Q Have you received contrary instructions to that, sir, since that time from Mr. West?

A The operating procedure we have operated on --

Q Just answer that question. . Since three days ago have you received contrary instructions from Mr. West permitting you to allow the Mesa water above the 520 limitation?

THE COURT. Maybe you had better get a base on the question. The first question you asked the witness was whether or not he heard Mr. West say they would not be able



to get any relief, except within the 520.

MR. BAKER. Yes.

THE COURT. Now you are asking did he receive any instructions that they could get it over the 520. Is that right?

MR. BAKER. Yes.

THE COURT. Well did you receive any instructions, Mr. Moser, at all from Mr. West in the last three days?

THE WITNESS. No, sir, I haven't.

THE COURT. Very well. That answers the question.

BY MR. BAKER:

Q Well then the decision, sir, Mr. West's decision of three days ago, is that we would not be permitted water in excess of 520, and you would have to abide by that decision, would you not, sir?

THE COURT. Mr. Baker, this Court will take judicial notice that in any organization the boss' order has to be taken and followed. Now if he hasn't got any evidence of what the boss' order is, we don't need to be worried about that, do we?

MR. BAKER. All right, sir.

BY MR. BAKER:

Q Now these water practices that you have mentioned, sir, you have not approached the Mesa, or the board of



directors, since you have been in office with these suggestions, have you, sir?

A To the contrary. I have discussed this with them on a number of occasions.

Q You have never made an inspection of our project, sir, have you, with the board of directors, until after this cut was imposed?

A Which cut are you talking about?

Q The ten per cent cut, sir.

A Not a complete inspection, no.

Q And these horticultural practices that you mentioned, sir, these ideas come from where? From your ideas from past experience on citrus management?

A From my ideas and from those of my staff.

Q Have you ever grown any citrus, Mr. Moser.

THE COURT. Has he ever done what?

MR. BAKER. Any citrus.

THE COURT. Has he ever grown any?

MR. BAKER. Yes.

THE COURT. Have you?

MR. BAKER. No, sir. But I'm not imposing any standards.

THE COURT. It seems to me you arguing it as though you were an expert at it.

What you know, you have already testified to; is that right?

THE WITNESS. Yes, sir.

THE COURT. You take the benefit of your staff's expertise and you apply it; is that correct?

THE WITNESS. Yes, sir.

THE COURT. Very well.

BY MR. BAKER:

Q Let me ask you this question, then, in closing:

Is it not a fact, Mr. Moser, that every major citrus growing organization -- Sunkist, Blue Bonnet, I believe, MCP -- all of the major citrus industries are engaged in that industry on the Mesa?

A I believe that is correct.

Q And it is their best knowledge that has produced the type of citrus farming that is going on today, is it not, sir?

A That's a difficult question to answer, to say it's with their best knowledge. The economics enter into this to a great extent. Sometimes it is easier to run water, and cheaper to run extra water, than it is to clean the field of weeds. But that's a wasteful practice.

Q Mr. Moser, there is no question, is there, that the Yuma Mesa, during the months of September, October and November and December, does not approximate its 520 rated capacity?

A That's normally, now, sir?

Q That's correct.

A There are some exceptions.

Q And historically they have not taken that amount of water, have they, sir, in the months of October, November and December?

A Not consistently, no; that's right.

THE COURT. In other words, they don't use the maximum of their contract; is that it?

THE WITNESS. That's right. During the three months they do not get up to the limit of their contract.

BY MR. BAKER:

Q But your cut is in effect during those months as well as during the hot months, isn't it, sir?

A The Secretary's order applies to the last seven months.

MR. BAKER. That's all.

THE COURT. Yes; but I think your problem is, isn't it, Mr. Baker, that the cut has never been effectuated any less than 520 cfs? Isn't that correct?

MR. BAKER. Well, yes. Let me develop one point here, which I think we have to establish.

BY MR. BAKER:

Q In the past month of July, Mr. Moser, you stated, I

believe, that the Mesa took 1593 acre-feet in excess of 520, did you not, sir?

A Yes, sir.

Q That water was not ordered water, was it, sir?

In other words, that was not water, part of a water order of the master schedule of the Mesa, was it?

A That's correct.

Q This was water that was turned down by some other district?

A No, sir; that is not necessarily correct.

Q Is it not a fact, Mr. Moser, that you have not honored any order of the Yuma Mesa in excess of 520 since the 1st day of July?

A We have not accepted orders on the master schedule in excess of 520. However, we have honored their order for water.

Q Yes; there is no question about that. But the distinction we are making here is this water was extra to the system, and by reason thereof it was made available to us.

A Not necessarily. It could have been drawn out of storage at Imperial Dam under the procedures we set up, the rules for which were sent to the district on June 10th of this year.

Q Is it not a fact, Mr. Moser -- and you know this

system as well as I do -- that extra water that is not scheduled cannot be put to efficient beneficial use, because you cannot take it into your master scheduling?

A The water that was made available to them was guaranteed for a 24-hour period in each case; and it continued over a number of days continuously.

Q And that, of course, that was an accident of fate, was it not?

A Not necessarily.

Q It was not something that you permitted us to do on a planning basis?

A When you asked for extra water during the month of July, water was made available to you in the amounts that it was available at Imperial Dam.

Q That's right. And we have a standing order with you for any extra water that you can find; is that not correct?

A I don't consider that you really have a standing order. You should make your needs known to us.

Q That's right. And we are not making a good beneficial use, then, sir, of this extra order when you don't permit us to put it in our master schedule?

A I have nothing to do with that. The operation within the district is the district's prerogative.

THE COURT. Mr. Moser, tell me a little bit about

this 520 cubic feet per second. That's the maximum. And 520 cubic feet per second is equal to 31,947 acre-feet. Now is that the --

THE WITNESS. That is during the 31-day month, yes.

THE COURT. And that's what under the contract is the maximum they are entitled to, as you understand it; is that correct?

THE WITNESS. Yes, sir, at Imperial Dam.

THE COURT. Suppose that in one month they only used 320 cubic feet per second. What do you do? Do you credit them with 200 cubic feet that they can use in some other month?

THE WITNESS. No. They order the water as they need it, up to that maximum.

THE COURT. But they don't have a bank of 520 cfs times 12, do they?

THE WITNESS. No, sir.

THE COURT. So when they receive anything up to 520 cfs, they are getting what they ask for?

THE WITNESS. Yes, sir.

THE COURT. And thus far this year you have given them more than 520 cubic feet per second in June, July and August, as far as your last calculation?

THE WITNESS. Yes, sir. There was extra water in

June. There was extra water in July. And so far there has also been extra water in August.

THE COURT. Let's assume that in the months of October and November there is some very unusual weather up there in the Mesa, and instead of cooling off, as I believe you said it did quite a bit earlier, it continues to stay very, very hot, and they continue to ask for 520 cubic feet per second each month. What would you do?

THE WITNESS. If it continued to be hot and they had the need for it, we would let them order it.

THE COURT. Because the ten per cent cut was made on a 1963 diversion which was in excess of 520 cubic feet per second, times 12 -- no, times seven?

THE WITNESS. No. It was only during the hot summer months last year that they took in excess of 520. During the fall months their use last year, as it is every year, is considerably below 520. They don't have the need for it during the cooler weather.

THE COURT. Then it could be possible, I suppose, having 520 plus in July, 26 more, and again in June let's say they used their 520, then assuming an extremely hot September, - October and November, they could probably be calling for 520 and pretty soon be over that ten per cent cut of 1963, couldn't they?



THE WITNESS. Yes. And I would certainly say that unusual weather conditions would be justification for additional water to meet hardship cases.

THE COURT. For the whole Mesa, or for individuals?

THE WITNESS. The hardship would be to take care of any crops that would need extra water. We make the water available to the district, and they in turn handle distribution within the district.

So that if 1964 were unusually hot in the fall, it is very likely that they would not be able to take the ten per cent cut.

THE COURT. And that's the time you come in with that offer to relieve them?

THE WITNESS. That is absolutely right, Your Honor.

THE COURT. Very well.

MR. BAKER. That's all.

THE COURT. Is there anything further, Mr. Green?

MR. GREEN. No, Your Honor.

(The witness Moser left the stand.)

THE COURT. Very well. I will hear you, Mr. Baker. You have five minutes if you want to argue.

MR. BAKER. May we have the Court's indulgence for just a second?

THE COURT. Are you going to use this map here that

is now on the blackboard? Are you going to put it in evidence, or not?

MR. BAKER. Yes, Your Honor. I would like to have it marked.

THE COURT. I don't know how the Court of Appeals is going to have any knowledge of what it is all about. Nobody has really identified it or pointed out anything on it. There are no markings. You can put it in, though -- Plaintiff's Exhibit 1 for identification in the Yuma Mesa case. You can take it off of that and roll it up, can't you?

MR. BAKER. Yes, Your Honor.

THE COURT. I think, unlike the case before Judge Walsh, the plaintiffs here have shown irreparable damage. Also I think the government has not shown how the public interest is going to be adversely affected when I balance the equities between the two parties.

Thirdly, so far as the probable result, the ultimate result, while I consider it a close question here, I think it is in favor of the plaintiffs at this time, for this reason:

With respect to the Bard Irrigation -- and I am speaking about both cases at this time -- with respect to the Bard Irrigation, there is no doubt about it, the Bard Irrigation users have individual contracts with the government, for beneficial use. The government says they haven't been using it wisely, and therefore they have been wasting it.

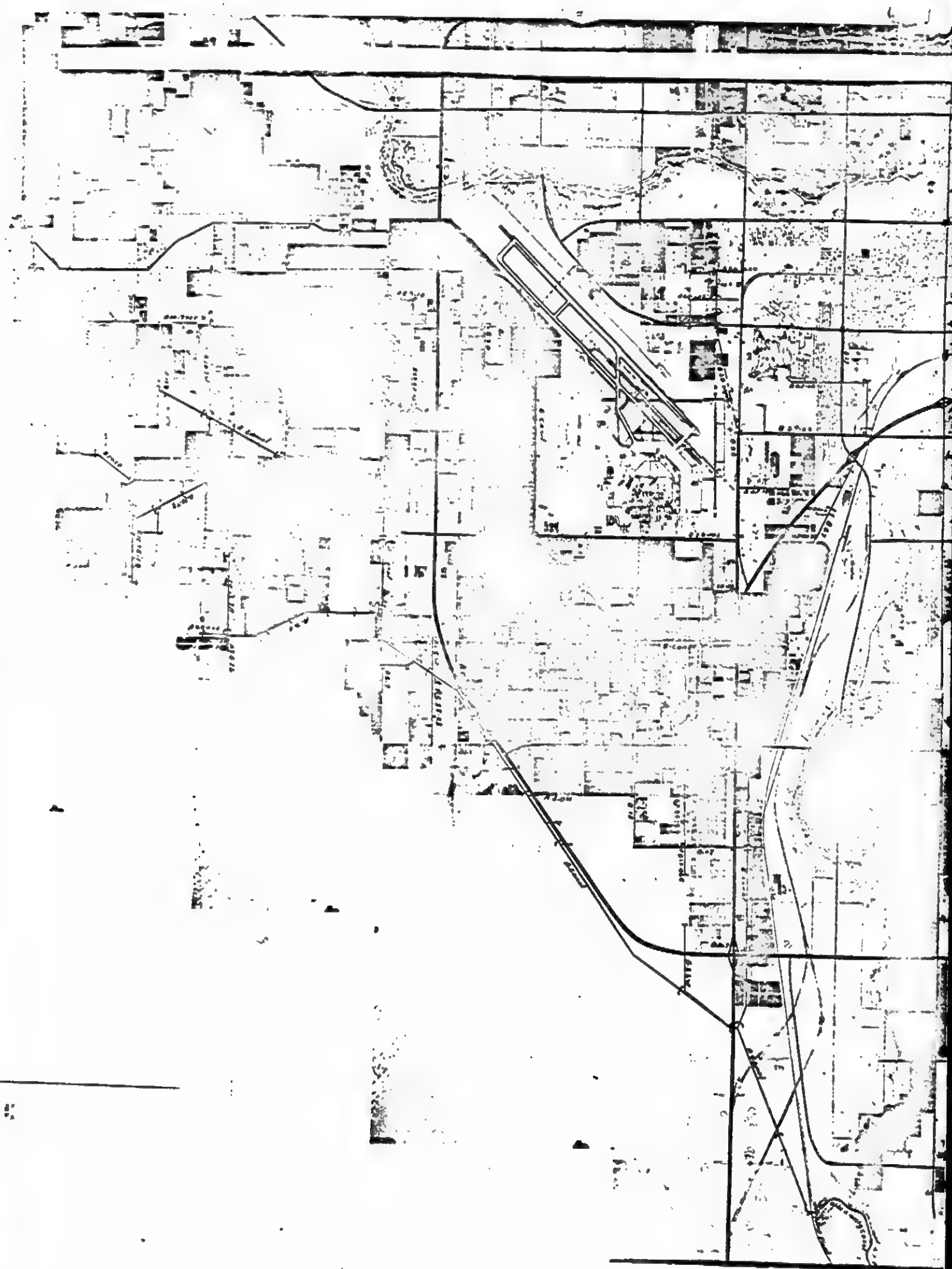
I of course make no final findings on a preliminary injunction. I don't think the government has made a case on

that, at least at this stage.

So far as the Yuma Mesa district is concerned, this 520 cfs, as Mr. Moser pointed out, that if it should come about that it were necessary to use all of this water, up to 520 cfs, during an unusual hot spell -- and we can't tell whether it's going to be, or not -- it could have a ten per cent cut and result in less than 520 cfs during this seven months' period.

It can be said of the government that "If you have an emergency, let us know, and we will put some water down your ditch." Well, the testimony here that I am inclined to accept, which may have been Mr. Smith's, is that you can't get it down the ditch when somebody else up the ditch has to use it 41 hours or three days or something like that to get their water.

I will grant preliminary injunctions for plaintiffs in both cases. Counsel for plaintiffs will present the orders.



(HEADING OMITTED)

Civil Action No. 1551-64

Filed: August 19, 1964

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This matter came on for hearing in open court on August 12, 1964, on plaintiff's Motion for Preliminary Injunction. The plaintiff asks the Court to restrain the Secretary of the Interior from enforcing an order issued May 16, 1964, effective June 1, 1964, reducing by ten per cent the delivery of irrigation water to the plaintiff. Plaintiff alleges a preliminary injunction is necessary to avoid irreparable damage by way of injury to citrus orchards and crops now growing in the area concerned, located south and east of Yuma, Arizona.

In opposition to the motion the defendant asserts this Court is without jurisdiction in that this is an action against the United States in that it seeks to enjoin the exercise by a federal officer of a power delegated to him by the United States, and the United States has not consented to be sued in the case: that plaintiff has not exhausted its administrative remedies, that plaintiff has an adequate remedy at law, and further that plaintiff will not suffer irreparable loss by virtue of the Secretary's order.

The Court has heard testimony and arguments of counsel; and has reviewed the pleadings and affidavits in the file; and after consideration of the same makes the following findings of fact and conclusions of law:

1. The plaintiff is a political subdivision of the State of Arizona.
- That the lands within the district are embraced within the boundaries of the

Gila Project as authorized by the Gila Projects Reauthorization Act of July 30, 1947, (61 Stat. 628).

2. The defendant is the Secretary of the Interior of the United States and is charged with the administration of the laws relating to the storage and delivery of waters of the main stream of the Colorado River.

3. That pursuant to the Gila Projects Reauthorization Act, the Reclamation Act of 1902 (32 Stat. 308) and amendatory acts thereto the government construed a fully lined conveyance system for the purpose of serving some 19,970 acres situated within the District with waters from the Colorado River.

4. Water for the Yuma Mesa division is diverted from the Arizona end of the Imperial Dam, through the Gila Gravity Main Canal, where it is pumped at the Yuma Mesa Pumping Plant to a canal with a capacity of 520 cubic feet per second which supplies distribution laterals serving lands in the District.

5. On May 26, 1956, the plaintiff entered a repayment contract with the United States, whereby the latter agreed, among other things, to deliver from storage in Lake Mead to or for the plaintiff through the Gila Main Canal from Imperial Dam "such quantities of water ... as may be ordered by the District and as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres situate" in the District. The contract inter alia, is subject to the provisions of the Boulder Canyon Project Act, the Colorado River Compact, and the Mexican



Water Treaty. The contract is for permanent service.

6. On May 16, 1964, at a press conference in Las Vegas, the defendant announced that he was ordering a ten percent reduction in water deliveries effective June 1, 1964 to all water user agencies in the Lower Basin of the Colorado River, including plaintiff, to be implemented by the Bureau of Reclamation. On May 19, 1964, the Regional Director in a letter to plaintiff advised that the water scheduled for diversion to the plaintiff for the seven month period of June through December, 1964, (176,000 acre-feet) would be reduced by 17,600 acre-feet to 158,400 acre-feet and that in addition the plaintiff would be charged with all water ordered for a given week and available for diversion at Imperial Dam but which could not be taken. That further in response to an amended schedule submitted under protest by the plaintiff, the Department of the Interior acting by and through T. H. Moser, project manager of the Yuma Project Office by letter of June 19, 1964, further informed plaintiff that all drainage wells must be credited against the proposed water order and directed that the reduced water order for the remaining seven months of the year would be 163,280 acre-feet from the yearly estimate submitted by plaintiff.

7. Prior to the announcement, the water users were afforded no notice of his action by publication in the federal register, nor a hearing. At the time of announcing the order, the Secretary admitted that there had been no completed study of conservation practices on the individual projects in the Lower Basin and stated further that "there is an element of arbitrariness in the approach we have taken."

8. That the diversionary works and delivery canals operated and maintained by the plaintiff constitute a completely lined and closed system without spillways or wasteways; that, therefore, all waters going into plaintiff's canal system end up and are used at the farm level.

9. That the cutback of ten percent implemented by the Yuma Projects Manager and the Regional Director pursuant to the Secretary's order was based upon actual deliveries to the plaintiff for farm use in 1963 for the last seven months of that year. That, therefore, a cutback of ten percent during the last seven months of 1964 will be a cutback in farm use of water.

10. That the plaintiff irrigation district is situated in arid, sandy desert country subject to extremes in temperatures.

11. That there are at the present time approximately 17,000 acres being farmed in the district of which approximately 16,000 acres are planted to citrus.

12. That approximate [sic] 60 percent of present citrus plantings are young non-fruit bearing citrus.

13. That the water demand for citrus and other crops grown upon the lands within the district is not a constant one but dependent upon cropping patterns, soil, and weather conditions.

14. That both a citrus crop and citrus orchards are sensitive to demands for water and under extreme weather conditions not uncommon

in the area are subject to damage and crop loss within periods ranging from 24 to 48 hours without water.

15. That the conveyance system of the Plaintiff is not of uniform size and the district serves approximately 6,600 acres by lateral 16 to 32 cubic feet per second in size.

16. That by reason of the foregoing, a water cutback pursuant to the defendant's May 16, 1964 order might place the citrus orchards upon the Mesa in a condition of extreme peril.

17. That by reason of the limitations above set forth, water cannot be made available on short notice to protect the crops from damage.

18. That there presently exists upon the lands within plaintiff's district a citrus fruit crop of a potential value based upon market forecast in excess of \$2 million which will be in production or partial harvest throughout the remaining months under the Secretary's order.

19. That the Secretary's order places the citrus orchards and crops in plaintiff's district in a position of imminent peril and irreparable harm. That the danger of irreparable harm to these orchards and crops will exist both during the remaining summer months and fall months under this order.

20. That the public interest will not be impaired by the issuance of a temporary injunction against the defendant.

21. Due to the low water levels at Lake Powell and Lake Mead on May 11th, 1964, the defendant closed the gates at Glen Canyon Dam in order to bring Lake Powell to minimum operation level. On May 16, 1964, the defendant announced the ten percent reduction to Lower Basin users in order to replenish the waters in Lake Mead.

22. The defendant has established no damage to itself or to the public interest resulting from the issuance of a preliminary injunction in this case. The public interest requires that the growing crops should be protected pending the final outcome of the case.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear and determine plaintiff's motion for preliminary injunction.

2. The plaintiff has made a strong showing that it is likely to prevail on the merits at the final hearing.

3. A preliminary injunction pending the final hearing in the action is necessary to prevent what otherwise might be irreparable injury to plaintiff's crops.

#### ORDER

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is this 19th day of August, 1964,

ORDERED that plaintiff's motion for a preliminary injunction be, and the same hereby is, granted; and

It is further ORDERED that the defendant, Stewart L. Udall, Secretary of the Interior of the United States, his agents and employees of the Department of Interior, be, and they hereby are, restrained and enjoined from enforcing and continuing the enforcement of the defendant's order of May 16, 1964, reducing by 10% the delivery of irrigation water to the plaintiff until further order of this Court.

And further ORDERED, that the plaintiff shall given an undertaking in the sum of five hundred (\$500.00) dollars to be approved by the Court.

/s/ Wm. B. Jones

JUDGE

Copy to:

Charles F. Wheatley, Jr., Esq.  
734 - 15th Street, N. W.  
Washington, D.C.  
Attorney for Plaintiff

Walter Kiechel, Jr., Esq.  
Department of Justice  
Washington, D. C.  
Attorney for Defendant

(HEADING OMITTED)

Civil Action No.1551-64

Filed October 9, 1964

ANSWER

For his answer to plaintiff's complaint defendant, by his attorney,  
says:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

The court lacks jurisdiction over the subject matter of the action because, although nominally a suit against a government official, this is in reality a suit against the sovereign, and, in the absence of consent, may not be maintained.

Third Defense

The United States is an indispensable party defendant, and the complaint should be dismissed for failure to join it.

Fourth Defense

The court lacks jurisdiction over the subject matter of this action because the consideration on the merits of the allegations in the complaint requires the interpretation and enforcement of the Boulder Canyon Project Act, 43 U.S.C. 617, and the decree entered by the Supreme Court of the United States in Arizona v. California, 376 U.S. 340 (1964), which interpretation and enforcement, by paragraph IX of the Supreme Court's decree, are within the exclusive jurisdiction of the Supreme Court.

Fifth Defense

1. The defendant admits the allegations of paragraph 1 of the complaint, except for the allegation that the plaintiff receives its water "under long established rights," this being a conclusion of law which does not require answer, and is therefore neither admitted nor denied, but to the extent that it may be considered an allegation of fact, it is denied.
2. The defendant admits the allegations in paragraph 2 of the complaint.
3. The defendant is advised and believes that the allegations in paragraph 3 of the complaint are matters of law which do not require answer and, therefore, those allegations are neither admitted nor denied.
4. The defendant is advised and believes that the allegations in paragraph 4 of the complaint are matters of law which do not require answer and, therefore, those allegations are neither admitted nor denied.
5. The defendant is advised that the allegations in paragraph 5 are merely arguments which do not require answer and, therefore, those allegations are neither admitted nor denied, but to the extent that they may be construed to be allegations of fact, they are denied.
6. The defendant admits the allegations in paragraph 6 of the complaint.
7. The defendant admits the allegations in paragraph 7 of the complaint.



8. The defendant admits the allegations in the first paragraph of paragraph 8 of the complaint, and these allegations in the following paragraphs of paragraph 8: that plaintiff's diversionary works and delivery canals constitute a closed system without wasteways; that plaintiff district is situated in arid, sandy desert country subject to extremes in summer temperatures, and that waters ordered by plaintiff are in the course of normal operations released from Parker Dam approximately 150 miles upstream from the point of diversion at Imperial Dam. The defendant denies the remaining allegations of paragraph 8 and avers that by a letter dated July 16, 1964, a copy of which is attached to this Answer as Defendant's Exhibit I, the plaintiff was advised that "additional water will be available to meet individual hardship cases if any develop."

9. The defendant denies the allegation in paragraph 9 of the complaint, and avers that the plaintiff made no attempt to pursue its administrative remedies.

10. The defendant admits the allegation in the first sentence in paragraph 10 of the complaint, but denies the allegation in the second sentence. The defendant is advised that the remaining allegations in paragraph 10 of the complaint are conclusions of law which do not require answer and, therefore, those allegations are neither admitted nor denied, but to the extent that they may be construed as allegations of fact, they are denied.

11. The defendant denies the allegations in the first paragraph of paragraph 11, and avers that the immediate purpose of the order of May

19, 1964, was to conserve water during a period of water scarcity. As the allegations of subparagraph (a), (b), (c), (d), and (e) of paragraph 11, defendant admits that the several actions and announcements therein referred to did happen and were made, but denies that the reasons for such actions and announcements are correctly reflected in said complaint; alleges that, on the contrary, each of said actions was taken and each of said announcements was made by the defendant in the performance of his duties in the operation and administration of the highly complex system of federal projects on the Colorado River, in both its Upper and Lower Basins to accomplish the multiplicity of purposes which those duties require that he accomplish. Defendant is advised that the remaining allegations in paragraph 11 are conclusions of law which do not require answer and, therefore, those allegations are neither admitted nor denied, but to the extent that they may be construed as allegations of fact, they are denied.

12, 13, 14. The defendant is advised that the allegations in paragraphs 12, 13 and 14 of the complaint are primarily matters on conclusions of law which do not require answer and, therefore, those allegations are neither admitted nor denied, but to the extent that they may be construed as allegations of fact, they are denied. Defendant admits that the Mexican Water Treaty of February 3, 1944, contains the provisions quoted in paragraph 13 and alleges that to the extent water has been received in Mexico in excess of that country's requests this is due in large measure to the past practice of plaintiff and other water users in the United States of ordering

quantities of water in excess of their actual diversions.

15. Defendant denies each and every allegation of the complaint not specifically admitted or qualified herein.

WHEREFORE, having fully answered, the defendant prays that the complaint be dismissed, with costs.

Respectfully,

\_\_\_\_\_  
RAMSEY CLARK  
Assistant Attorney General

\_\_\_\_\_  
DAVID R. WARNER

\_\_\_\_\_  
WALTER KIECHEL, JR.

\_\_\_\_\_  
MARTIN GREEN

Attorneys  
Department of Justice  
Washington, D.C. 20530

(CERTIFICATE OF SERVICE OMITTED)

JUL 16 1964

Mr. Lowell O. Weeks  
General Manager-Chief Engineer  
Coachella Valley County Water District  
P.O. Box 1058  
Coachella, California

Dear Mr. Weeks:

In announcing at Las Vegas on May 16, 1964, that he had directed the Bureau of Reclamation to secure a ten percent reduction in diversion of water from the Lower Colorado River during the seven months beginning June 1, 1964, the Secretary of the Interior also announced that special consideration would be given to hardship cases or special problems which might arise in the implementation of his order. As Director of Region 3 of the Bureau of Reclamation, I was given the responsibility for making adjustments in hardship cases.

When the reduction was ordered, it was anticipated that improved water-management practices well within the capabilities of the operating entities would permit the reduction to be absorbed without hardship to individual irrigators. The Department and the Bureau remain convinced that a ten percent reduction in Colorado River diversions can be effectuated during the last seven months of this calendar year without adverse effect upon the amount of water available to farmers for irrigating and maturing growing crops. It was not, and is not, the intention of the Secretary of the Interior, or of the Bureau of Reclamation, that the reduction in diversions be applied in such manner as to result in impairment of crop yields to any individual. Standards of sound water conservation do not require that individual crop losses occur.

Each entity and individual water user must, however, continue to employ the most prudent method to utilize the quantity of water available under the reduced schedule of diversion. Obviously, additional water will be available for delivery to most individual hardship cases if any develop. Therefore, I am asking that each entity keep in close touch with the Bureau in order that effective and timely action can be taken to assure that individual needs are met, while at the same time overdiversion, excess delivery, and other forms of waste are kept to a minimum.

Defendant's Exhibit 1

It is gratifying to observe that the reduction in diversion made necessary by these years of low runoff has met with a high degree of cooperation by contractors for Colorado River water. With continued cooperative and diligent efforts to reduce waste and maintain frugal water-use practices, I am confident that the immediate objective of the program to reduce Colorado River diversion will be achieved.

Sincerely yours,

/s/ A. B. West

A. B. West  
Regional Director

bc:

Commissioner, Attn: 400 and 120, Washington, D. C.  
Regional Solicitor, Los Angeles, California  
Project Manager, Yuma, Arizona

Identical letter to those listed on attached sheet.

Mr. Robert F. Carter  
General Manager  
Imperial Irrigation District  
582 State Street  
El Centro, California

Mr. J. E. Blakemore, Manager  
Palo Verde Irrigation District  
Box 38  
Blythe, California

Mr. Vergil Vance, President  
Unit B Irrigation and Drainage District  
Route 1, Box 31M  
Somerton, Arizona  
(with copy to Mr. William P. Copple, Attorney)

Mr. Edgar H. Shahan, President  
Wellton-Mohawk Irrigation and Drainage District  
P.O. Box 817  
Wellton, Arizona  
(with copy to Mr. William P. Copple, Attorney)

Mr. Sam F. Dick, President  
Yuma County Water Users' Association  
P.O. Box 708  
Yuma, Arizona

Mr. E. E. Winebarger, President  
Yuma Mesa Irrigation and Drainage District  
Route 3, Box 32  
Yuma, Arizona

Mr. James Ferguson, President  
North Gila Valley Irrigation District  
P.O. Box 1511  
Yuma, Arizona  
(with copy to Mr. William P. Copple, Attorney)

Mr. W. Wade Head, Area Director  
Bureau of Indian Affairs  
P.O. Box 7007  
Phoenix, Arizona

(HEADING OMITTED)

Civil Action No. 1551-64  
Filed: September 1, 1965

CERTIFICATE OF READINESS

This is to certify that the above-entitled cause is actually ready  
for trial.

/s/ Charles F. Wheatley, Jr.  
CHARLES F. WHEATLEY, JR.

Address: 1200 Walker Bldg.,  
Washington, D.C.

Attorney for Plaintiff

NOTE: Unless opposition to the above Certificate of Readiness is filed  
within ten days from date of service, the cause will be placed  
on the Ready Calendar, pursuant to Local Rule 11(d) as amended  
November 21, 1961.

Served the above Certificate of Readiness by (mailing)  
(delivering)

a copy thereof on first day of Sept. 1965 .

TO: Walter Kiechel  
Department of Justice  
Washington, D.C.

/s/ Charles F. Wheatley, Jr.  
Attorney



(HEADING OMITTED)

Civil Action No. 1551-64  
Filed: September 10, 1965

OBJECTION TO CERTIFICATE OF READINESS

The defendant objects to the Certificate of Readiness filed by the plaintiff herein on September 1, 1965, on the ground that this action should be dismissed for the reasons set forth in a motion to dismiss filed today in this matter, and for the further reason that this action, seeking to enjoin the enforcement of an order of the Secretary of the Interior, is moot, since, as the pleadings and other materials on file reveal, the Secretary's order by its own terms expired on midnight, December 31, 1964, and is no longer in effect.

---

DAVID R. WARNER

---

WALTER KIECHEL, JR.

---

/s/ Martin Green  
MARTIN GREEN

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED)

Civil Action No. 1551-64  
Filed: September 10, 1965

MOTION TO DISMISS

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, the defendant in the above-entitled action moves that the complaint therein be dismissed and the preliminary injunction heretofore entered be dissolved on the grounds that

- (1) the complaint fails to state a claim upon which relief can be granted; and
- (2) this court lacks jurisdiction over the subject matter of the suit.

Respectfully submitted,

---

DAVID R. WARNER

---

WALTER KIECHEL, JR.

---

MARTIN GREEN

Attorneys  
Department of Justice  
Washington, D. C. 20530

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

----- x  
YUMA MESA IRRIGATION AND  
DRAINAGE DISTRICT, :  
Plaintiff :  
v. : Civil Action No. 1551-64  
STEWART L. UDALL, :  
Secretary of the Interior, :  
Defendant :  
----- x

Washington, D. C.

Friday, November 5, 1965

The above-entitled matter came on for hearing on  
motion to dismiss before HONORABLE HOWARD F. CORCORAN, United  
States District Judge.

† APPEARANCES:

On behalf of the Plaintiff:

CHARLES F. WHEATLEY, JR., ESQ.

On behalf of the Defendant:

MARTIN GREEN, ESQ., and  
WALTER KIECHEL, JR., ESQ.

C O N T E N T S

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P R O C E E D I N G S

THE DEPUTY CLERK: Yuma Mesa Irrigation versus Udall.

MR. KIECHEL: Walter Kiechel and Martin Green representing the defendant, Your Honor. Mr. Green will present the argument.

THE COURT: Very well.

ARGUMENT IN SUPPORT OF MOTION

MR. GREEN: May it please the Court, my name is Martin Green. I am attorney for the defendant in the action entitled Yuma Mesa Irrigation and Drainage District versus Stewart L. Udall, Secretary of the Interior.

The hearing this morning, Your Honor, is on the motion to dismiss filed by the defendant. There are a number of grounds given for our motion but the one that we believe ought to be determinative and requires the least time to present to the Court is the mootness of the case.

On May 16, 1964, in Las Vegas, Nevada, the Secretary of the Interior announced that because of the water shortage then existing, he was going to cut by ten per cent the right of all contractees to receive water, Colorado River water from the Government, and this order was implemented by a letter sent on May 19, 1964 by the Regional Director of the

Bureau of Reclamation to the president of the plaintiff organization.

As a result of this letter, the total amount of water which the plaintiff might divert for the seven-month period going from June to December 1964 was cut ultimately to 163,280 acre-feet.

The plaintiff commenced an action in this District Court, seeking to have the enforcement of this order enjoined and a preliminary injunction was issued by Judge Jones on August 19th, 1964.

The order of the Secretary of the Interior expired by its own terms at midnight December 31st, 1964. There is, therefore, now existing no restraint upon the plaintiff in its ordering of water from the Colorado River. We, therefore, submit, Your Honor, that the whole action is moot and for that reason alone should be dismissed.

In our motion to dismiss which was submitted to this Court on September 10th of this year in response to the filing by the plaintiff of --

THE COURT: Excuse me, Mr. Green. Are you going into another point now?

MR. GREEN: Yes, sir.

THE COURT: Let me hear from Mr. Wheatley on the

point of mootness.

MR. GREEN: Yes, Your Honor.

ARGUMENT IN OPPOSITION TO THE MOTION

MR. WHEATLEY: Your Honor, my name is Charles Wheatley. I am attorney for the plaintiff, Yuma Mesa Irrigation and Drainage District.

The mootness point was not even made by the Government in their motion. They added it as an afterthought. We submit that the motion makes it quite clear that the Government is now continuing the policy that it inaugurated in the order itself and I would like to, if I may, just refer to page 24 of the Government's motion to dismiss.

The Government there states, "At the present time in the Colorado River Basin, there is a severe shortage of water."

The question I would like to ask: Does the Government now contend that the plaintiff is wasting water and making an unreasonable use of water?

At page 24, it is quite clear that the Government does intend to proceed with what they call a water conservation program affecting the plaintiff in this area.

The whole controversy in this case came about because the Government said we were wasting water in our



Irrigation District there, and the plaintiff contended that we weren't wasting water, that we were using water reasonably and efficiently. Now, that was the heart of this case, Were we wasting water or were we making the use of water to which we were entitled under our water delivery contract, which calls for permanent service from the United States?

At the time of the preliminary hearing, Judge Jones heard evidence of fact on the case and he determined at that time, at least for purposes of the preliminary injunction, that the evidence did not establish that we were wasting water and for that reason, he entered a preliminary injunction.

We say that unless the Government will state now at this point that they don't contend that the Yuma Mesa Irrigation District is wasting water in their irrigation function, if they will make that admission that they are not at this moment proceeding with some sort of the similar type of conservation program that was embodied in the May 16 order, then the case is not moot.

We cite in our answer to the objection to certificate of readiness the case of Fox v. Ickes. In that case, there was an order by the Secretary and the case went to trial. Then the Secretary revoked the order, but the Court said the case was not moot if the policy which the order had

embodied to begin with still continued, that the case would not be moot.

As far as we know, the Government has never indicated that they are not going to contend or are not contending now that Yuma Mesa is wasting water, which was the very heart of the case to begin with.

THE COURT: Is it a question of waste, or is it a question of the Secretary exercising his discretion in the interest of conservation?

I don't think the Secretary has to prove waste in order to put in controls.

MR. WHEATLEY: Well, he cannot cut us back on our deliveries, Your Honor, if in fact our deliveries are reasonably required and necessary because under the terms of our contract, we are entitled to the beneficial consumptive use of the quantities reasonably necessary to irrigate our land. And that's a question of fact, Your Honor.

THE COURT: If he makes findings on adequate evidence and arrives at a conclusion that this is reasonably necessary, is there anything to stop him?

MR. WHEATLEY: Well, the point is that if --

THE COURT: You don't have a right to a certain amount of water.

MR. WHEATLEY: We have a right to an amount of water --

THE COURT: Not in terms of so many gallons.

MR. WHEATLEY: No; that is right. There is a ceiling on the right of 520 cubic feet per second.

THE COURT: That is right. You have got a ceiling but you haven't any specific right that gives you a specific number of gallons.

MR. WHEATLEY: That's right. The measure of the right is whether the water is reasonably beneficially necessary, and this was the precise issue which was tried out on the preliminary injunction. The Government claimed that they were simply involved in a water conservation program and that we were using water beyond what we had a right to under the terms of our contract. In other words, we were using water unreasonably and wasting water.

Judge Jones heard evidence at that point and he concluded there was no evidence that we were doing that, that we were exercising proper irrigation practices and, under the facts at the time of the preliminary hearing, that we were making a reasonable use of water and that, therefore, the defendant's order could cause irreparable harm.

THE COURT: Well, I think right at this moment we

are getting -- with all due respect to your approach to it, I think the mootness comes after the other part of the case. I think we had better talk about some of the merits before we get into what is moot and what isn't. So, will you let him proceed with his main argument and we will come back to you then.

MR. WHEATLEY: Yes, Your Honor.

ARGUMENT IN SUPPORT OF THE MOTION

MR. GREEN: Your Honor, I think it may be fair to say that this action involves the authority of the Secretary of the Interior to impose conservation measures upon the use of Colorado River water during a time of water shortage. That is, of course, what he attempted to do when he issued his order of May 16th, 1964, and this was implemented by the requirement that people having water contracts with the Secretary decrease by ten per cent the amount of their water diversion.

Now, this action should be dismissed, first, Your Honor, because of failure to state a cause of action. This involves a point which you have already anticipated: The provisions of the plaintiff's contract with the Secretary, how much water may he get.

The contract with the Secretary, as set forth in

the Plaintiff's Exhibit B -- and I wish to call special attention to paragraph 4 of the contract, which provides for the delivery to the plaintiff of such quantities of water as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres situated in the Yuma Mesa Irrigation and Drainage District.

There is a further limitation within the contract, that the maximum rate of diversion of water at Imperial Dam may not exceed 520 cubic feet per second.

The Secretary, after he issued the order decreasing by ten per cent the amount of water which may be diverted by the plaintiff, specified in a letter to the plaintiff, dated July 16th, 1964, that in any event additional water would be available for delivery to meet individual hardship cases. In other words, Your Honor, the Secretary there indicated an intent to comply fully with the requirements of the contract and to deliver water necessary to keep growing all that was growing in the Yuma Mesa Irrigation and Drainage District.

Therefore, we submit, there was no violation by the Secretary of his contract obligation. He stated completely and fully that he was going to give the Irrigation District all the water it needed to continue the irrigation during the summer of 1964. Therefore, we submit, Your Honor, there

simply is no cause of action warranting this Court taking the measures requested by the plaintiff, that is, enjoining the Secretary's order.

Our second point is that the action should be dismissed because the Court lacks jurisdiction over the subject matter of this suit. This purports to be a suit against the Secretary of the Interior but it is in fact a suit against the Government, which may not be entertained by this Court for lack of consent.

The case which deals with this completely is *Larson v. Domestic and Foreign Corp.*, 337 U.S. 682, a 1949 Supreme Court case. There the Supreme Court held that the action of an officer can be regarded as so illegal as to warrant bringing a suit against him individually only if the action is not within the officer's statutory powers or, if within those statutory powers, those powers are unconstitutional.

Furthermore, in the same decision, the point is made that even if the action complained of is within the officer's statutory powers or even if those powers are unconstitutional, the suit must be considered one against the sovereign if the relief requested will require affirmative action by the sovereign.

Now, in our brief we show at great length that the Secretary certainly has the statutory authority to manage the Colorado River. This is as a result of the Boulder Canyon Project Act of December 21, 1928, which is codified at 43 U.S.C. 617. This Act, Your Honor, was <sup>to a large extent</sup> the subject of the Supreme Court's decision in Arizona v. California and there ~~the~~ powers of the Secretary to manage the Colorado River, in order to give it a unitary management so that its waters may be harnessed and put to most effecient use was discussed at great length, and the Court affirmed and even stated more strongly than the Act the powers of the Secretary in this respect.

Now, the plaintiff, in arguing against the power of the Secretary to decrease diversion, has made arguments such as, The Secretary cannot decrease water diversion in Arizona until the total amount of water consumed in California has been reduced to 4,400,000 acre-feet in accordance with the Boulder Canyon Project Act and the decree of the Supreme Court in Arizona v. California.

In making that argument, the plaintiff also points out that Arizona is not using the full amount, which is 2,800,000 acre-feet which is allotted to it under the Court's decree.

The plaintiff overlooks the fact that when Arizona



is not using its full amount, the excess may be used by another state, by California. But putting to one side this technicality, the plaintiff is arguing that one side of the river, the Arizona side, can use water all it wants and even waste it perhaps, but at least use all the water it wants, while the other side of the river, California, must be cut down to 4,400,000 acre-feet before the Secretary even begins to --

THE COURT: Let me interrupt you right there, Mr. Green.

Does the plaintiff as an individual have any right, any standing in court to challenge on behalf of the state?

MR. GREEN: On behalf of the state?

THE COURT: Yes. Who can challenge the diversion of water among the states except the states themselves?

MR. GREEN: Only the states, Your Honor. I believe this is made very clear by an act passed recently, and the citation of which I can find in a second, which says that where states have any question over the distribution of water, their remedy is an action brought in the Supreme Court against the Secretary of the Interior. In fact, we will argue later on that only the Supreme Court has jurisdiction over questions dissolving the use and distribution of Colorado

River water and that the lower courts may not entertain actions involving this question.

THE COURT: I didn't mean to interrupt you but that question just came to my mind. Go ahead.

MR. GREEN: Yes.

Plaintiff further makes the argument against the Secretary's authority to cut diversions that while over-deliveries to Mexico continue, the Secretary may not decrease the amount of water which the plaintiff receives. The plaintiff overlooks the fact that by its own ordering of the water which it can't use and doesn't use and which it rejects, this is the cause for the over-deliveries to Mexico.

In fact, the Secretary of the Interior has attempted by requiring the plaintiff to use the water it orders or if it doesn't use it, have charged against it the water ordered, to minimize and perhaps even to eliminate the over-deliveries to Mexico.

It is not an infrequent practice for a contractee along the river, Yuma Mesa but not only Yuma Mesa, others, to order water and then when the water comes because of changed climatic conditions, we acknowledge, but nevertheless when the water comes, they are unable to use it and the water flows on down to Mexico, thereby resulting in an over-delivery of

water that we are obligated to deliver to Mexico under the Treaty.

This argument by the plaintiff seems ludicrous, it seems to me, Your Honor, because they are saying, We have a right to order all we want and you may not cut us down because, look, you are delivering too much to Mexico. They fail to see the intimate connection between their ordering all they want and the over-deliveries to Mexico. The Secretary's order, as a matter of fact, should be sustained as an attempt to limit these over-deliveries to Mexico.

We have argued that the Secretary of the Interior did not violate any law by cutting down on the amount which the plaintiff might divert. I wish to point out that the only right which the plaintiff has to divert water is its contract right with the Secretary.

Now, if we assume that the Secretary's decrease in the amount that the plaintiff might order was a breach of the contract, the fact remains that that breach may not be enjoined. The only remedy is an action under the Tucker Act to recover the money damages for the breach.

As the Court said in the Larson case, Courts cannot control the operation of the Government by enjoining the Secretary of the Interior in his activities. If somebody

is injured, he has a remedy but the remedy is not injunction.

The last point I want to make, Your Honor, is that of the sole jurisdiction of the Supreme Court in the subject matter of this action.

Arizona v. California considered at great length the way in which the water of the Colorado River was to be distributed to the states and to people claiming what are called "present perfected rights." A decree has been entered in that case specifying that the Supreme Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the decree or any supplementary decree that may at any time be deemed proper in relation to the subject matter in the case.

THE COURT: Would that extend to controversies within one state or controversies among states?

MR. GREEN: I believe all controversies relating to Colorado River water, among water users within one state claiming "present perfected rights" and among the states.

I bring that up, Your Honor, because the plaintiff has alleged that it has a vested right to Colorado River water. We have pointed out and I believe there is no question but that its sole right is its contract right with the Secretary.

A present perfected right is something which is now being defined and determined in connection with Arizona v. California. The states and the Secretary of the Interior are making up lists of people who have so-called present perfected rights. This isn't completed yet, and I don't know when it will be completed. I don't believe it will be completed within the time specified by the Supreme Court, which is March of 1966.

Until this decree is listed, nobody claiming a vested right -- as does the plaintiff -- may, we submit, commence an action in any inferior court raising the question of its vested right because a vested right with respect to Colorado River water can be only one thing and that is a present perfected right, and who has them is now a matter which is being decided to implement the Supreme Court's decree.

Now, I wish to conclude by referring to Section 14 of the Colorado River Storage Project Act, which contains that provision which I referred to earlier. The citation is 43 U.S.C. 620m. It says that in the operation of all facilities in the basin of the Colorado River, the Secretary of the Interior is directed to comply with the applicable provisions of the Colorado River Compact and numerous other

statutes. "In the event of the failure of the Secretary of the Interior to so comply, any State of the Colorado River Basin may maintain an action in the Supreme Court of the United States to enforce the provisions of this section, and consent is given to the joinder of the United States as a party in such suit or suits, as a defendant or otherwise." —

We believe that this statute, Your Honor, indicates a policy of the Congress that suits involving Colorado River water shall be brought in the Supreme Court of the United States. It is also evident we believe, Your Honor, that these suits are actions against the sovereign because this is specific consent to sue the Secretary and it is consent to the joinder of the United States.

Therefore, we repeat that this action is not an action against the Secretary but against the sovereign which must be dismissed for that reason for no consent has been given, and also that there is no cause of action that has been stated because the Secretary has not in any way diminished the plaintiff's contract right.

Thank you, Your Honor.

THE COURT: Let me interrupt this hearing a few minutes.

(Short pause in proceedings.)

THE COURT: Now, Mr. Wheatley, you may proceed.

ARGUMENT IN OPPOSITION TO THE MOTION

MR. WHEATLEY: Your Honor, we, of course, in our reply raised the question of untimeliness. I won't go into arguing that further.

THE COURT: That is on the question of mootness.

MR. WHEATLEY: No. We say the motion to dismiss was untimely because under Rule 12 of the Federal Rules of Civil Procedure, it is supposed to be filed -- in the mandatory language of the Rule -- before the answer and the Government had two months after Judge Jones entered the preliminary injunction to file this motion before they answered about a year ago. Now, a year later they come back with a motion to dismiss.

Further than that, the motion to dismiss is a re-argument of all of the matters which were argued before Judge Jones. All of the points that we are arguing here this morning have been argued in great depth before Judge Jones, and I might add were argued before Judge Walsh. Both Judge Jones and Judge Walsh in a companion case have ruled that this Court does have jurisdiction to proceed.

Now, rather than just relying on that I would like to go back into the merits of this because I think it is



quite clear that the Court does have jurisdiction and that the Government has not stated anything in its motion to dismiss that warrants consideration even though this is the second time around.

Taking up first their ground that the complaint fails to state a claim: Now, they rely here quite heavily on their letter of July 16th, 1964. That letter was appended to their objection to the motion for preliminary injunction before Judge Jones. It was the subject of a full day of argument.

Here is the problem --

THE COURT: I think they are timely enough because Judge Jones's injunction ran to last year's allotment out there under your show of continuing violations, so I think they have a right to come in and ask for a dissolution of the injunction on that basis.

MR. WHEATLEY: Well, Your Honor, the point is this: They claim that because of the letter of July 16th that simply says, We plan to deliver you the water that you need, we are not going to see that any crops are damaged -- There is a dispute of fact between the Government and the plaintiff here as to what the quantity of water is required to beneficially irrigate these crops under the contract.

There is a dispute there.

Now, in his findings -- this is the problem that is involved -- Judge Jones found as follows, he said in paragraph 14, "Both a citrus crop and citrus orchards are sensitive to demands for water and under extreme weather conditions not uncommon in the area are subject to damage and crop loss within periods ranging from 24 to 48 hours without water.

"15. That the conveyance system of the plaintiff is not of uniform size and the district serves approximately 6,600 acres by lateral 16 to 32 cubic feet per second in size.

"16. That by reason of the foregoing, a water cutback pursuant to the defendant's May 16, 1964 order might place the citrus orchards upon the Mesa in a condition of extreme peril.

"17. That by reason of the limitations above set forth, water cannot be made available on short notice to protect the crops from damage."

Now, the point is just this: There is a split of opinion between the Government and the plaintiff in this case as to the water reasonably necessary to irrigate these crops. The Government takes one position and they have not said that they are backing down on that position. If they cut the

water and limit us to that amount of water that they think is reasonably necessary, it takes several days for that water to get down to the end of the laterals -- these small laterals where the farms are -- and as Judge Jones found in his findings it would be impossible if you had a change in the weather, if hot weather came it would be impossible to get the water that would have been there had our theory as to the amount of water necessary not been overlooked by the Government. It would have been impossible to get that water down there and, therefore, you would have irreparable harm to the crops.

THE COURT: Well, he left it wide open. He said, as a conservation measure, I am going to set a certain allocation and I will look at it again if you need it. I will leave it wide open for you to come in and apply to me and I will give you more water if necessary to protect your crops then.

Now, how does he violate his contract when he says that?

Don't forget, you have no right to any specific acreage feet of water now; you are just allowed enough water to take care of your crops within certain limits.

MR. WHEATLEY: Your Honor, the Government has not contended that the cutback that was ordered by the May 16th

order was unreasonable. We say that that cutback is unreasonable and but for the preliminary injunction, they would be cutting us back now. We say if that cutback were in effect --

THE COURT: Look at last year. As a matter of fact, were you damaged in 1964?

MR. WHEATLEY: No, because we had a preliminary injunction, Your Honor. They were enjoined from cutting us back and had the preliminary injunction not been in effect, we conceivably would have been.

THE COURT: Conceivably.

MR. WHEATLEY: Well, we don't know because we got the water --

THE COURT: Aren't you challenging the Secretary's power?

Let me ask you this preliminary question: Do you doubt that the Secretary was acting as the United States Government when he did this?

MR. WHEATLEY: Your Honor, that gets us into the question of jurisdiction over this --

THE COURT: Let <sup>me</sup> follow up my argument.

MR. WHEATLEY: Yes.

THE COURT: Will you concede that he was acting for the United States Government when he did this?

MR. WHEATLEY: No, I will not. I would say that he was acting beyond his authority as set down in the statutes and the law governing him in operating that river, and he cannot act illegally. The Larson case is as clear as a bell on this point that if the Secretary of the Interior acts beyond his statutory authority, he is subject to suit in the District Court.

THE COURT: How did he act beyond his authority? He entered the contract with you in his capacity as the United States Government, did he not?

MR. WHEATLEY: Right.

THE COURT: Now, how did he exceed his authority in interpreting the contract within its own limitations?

MR. WHEATLEY: He has exceeded his authority in a number of different respects, any one of which if found to be valid would authorize this Court to enter a permanent injunction.

First off, he has violated the clear "law of the river" that power users are subservient to irrigation districts. Now, this "law of the river" is set forth in the Compacts and the Project Act, and other documents. It is the law of the river. There is no question about that.

Now, the law is quite clear that the Secretary

can't cut back irrigation for power. Now, it is a question of fact as to whether the filling of Lake Powell upstream for power purposes is responsible for the reduction of water which the Government plans to make to irrigation consumptive users in the Lower Basin.

Judge Jones at the preliminary hearing issued a finding of fact, finding No. 21, on this point. He said, "Due to the low water levels at Lake Powell and Lake Mead on May 11th, 1964, the defendant closed the gates at Glen Canyon Dam in order to bring Lake Powell to minimum operation level. On May 16th, 1964, the defendant announced the ten per cent reduction to Lower Basin users in order to replenish the waters in Lake Mead."

So, if he cut us back, if he instituted this alleged conservation program for the purpose of keeping water for power purposes in upstream reservoirs, he exceeded his authority. And if he exceeded his authority, he is subject to suit. That was ground No. 1 that we mentioned.

Another ground was that the Secretary acted without notice or hearing to the plaintiff in violation of their rights under Section 5 of the Administrative Procedure Act and the Fifth Amendment of the Constitution.

The Government admits that a contract user has a

property right which is subject to protection under the Fifth Amendment. That being so, the law is quite clear under the Wong Yang Sung v. McGrath case that that party is entitled to a hearing under Section 5 of the Administrative Procedure Act before his property rights can be arbitrarily taken away.

Now, if the Secretary wants to contend -- this is our position -- if he wants to contend that the water users in the Yuma Mesa Irrigation District are using water unreasonably, that we are wasting water, that we are using it beyond our contract, then what he ought to do is institute a hearing and if he makes a valid finding on that type of a procedure, why then he will have complied with Section 5 of the Administrative Procedure Act. He can't arbitrarily say, I think you are wasting water, and cut off the water into our District where it would damage permanently some of our crops.

THE COURT: He may be acting wrongfully but he is acting as the United States Government in committing the wrong.

MR. WHEATLEY: No, he is not acting -- Your Honor, the point is this that if he acts beyond his statutory authority, and the Larson case is quite clear on this --

THE COURT: Well, statutory authority is wide, wide open. He can do practically anything he wants to do in the



Colorado River System.

MR. WHEATLEY: No, he cannot -- the point I mentioned before -- he cannot cut back irrigation users for power. That is clear.

THE COURT: Well, you are not hurt by it. You have no standing to complain.

MR. WHEATLEY: We would be hurt if it were not for this suit.

THE COURT: You have got to prove that you are hurt.

MR. WHEATLEY: Well, that's the whole thing, Your Honor. That's why we say the case involves several issues of fact, one of which is whether or not the defendant was acting reasonably or unreasonably in cutting back our usage. And this issue of fact is one which cannot be decided on a motion; it can only be decided by a trial on the merits. For that reason, the motion is not an appropriate way to dispose of this case.

THE COURT: Well, maybe you get a trial on the merits but there is no reason why you have to have the whole shooting match enjoined in the meantime.

I don't think, number one, that you can establish by anything you have put in your briefs or any of your

affidavits that the Secretary of the Interior was acting for anybody but the United States Government no-matter what he was doing.

MR. WHEATLEY: Well, Your Honor, he may have been purporting to act for the United States but if he acts illegally, if he acts beyond what the statutes say he is supposed to act, then the Courts are authorized to enjoin him. And this is the law of the Larson case. It is the law that the Supreme Court itself stated in Arizona v. California, and I will read a section of --

THE COURT: I am familiar with those two cases.

MR. WHEATLEY: Yes. Well, in other words, the Government's contention as I see it is simply that anytime a Government official says, I am acting for the United States, he is not subject to judicial review. That is not the law.

THE COURT: I know that is not the law. But I don't think you have shown how he is acting outside the scope of his authority.

MR. WHEATLEY: Well, I have mentioned two points, Your Honor: The question of trying to cut our uses back without granting us an administrative hearing and the question of cutting back irrigation uses for power, which I believe are fairly clear. We have argued several other points of law.

THE COURT: All you have is a contractual right. Now, if he supplies the water that fills your contractual right, where do you have any standing to enjoin him in his activity?

MR. WHEATLEY: I will agree with Your Honor, if he fills our contractual rights.

THE COURT: But he does.

MR. WHEATLEY: No. No, that is the crux of the controversy. He says he is fulfilling our contractual rights; we say he is not.

THE COURT: But he, in his administrative discretion, looks into this and makes certain findings and acts on those. Now, you say they are arbitrary and capricious -- maybe they are -- but they are not illegal in the sense that you can say, Well, now he has become the Secretary instead of the United States.

MR. WHEATLEY: If Your Honor, as in *Iches v. Fox* -- there the Secretary decided that these farmers should get along on 3 acre-feet instead of 4-1/2 acre-feet of water as they had been using. He said, I think that it's perfectly reasonable, that 3 acre-feet is enough water here and I make this finding. That case went to trial in the District Court on the facts as to whether 3 acre-feet or 4-1/2 acre-feet

was a reasonable quantity of water for those lands.

The case was finally decided in Fox v. Ickes in the Court of Appeals, and the Court of Appeals held that 4-1/2 acre-feet, based on the admissions the Secretary made and other facts in the record, was the reasonable quantity of water and, therefore, the Secretary should be enjoined from reducing to 3 acre-feet. That case was cited with approval by the U. S. Supreme Court in Arizona v. California.

THE COURT: How about the fact that the Secretary held himself wide open and said, Come on in and tell me what you need? How is he being unreasonable there?

MR. WHEATLEY: Well, he is cutting us down. Here is what he does: He says, I think that you can get along with this much water, and he cuts you off there and --

THE COURT: But come on in if your crops are in trouble and let me know.

MR. WHEATLEY: The point is that he has made the decision. It gets to a very complex question of irrigation practice, Your Honor, and we went into this with Judge Jones and Judge Jones was quite convinced by the matter that it may look that for a certain period of time the water that you are having is sufficient but the weather changes quickly and at that point, if you hadn't been getting the water you ordered,

if the Secretary has cut you back at the head gate and you get that change of weather, it is impossible to get the additional water that you said you needed all along down to the crops before the time there is permanent damage to those orchards. And once they have had permanent damage, there would be five or six years replenishing the trees.

Your Honor, we wish to conclude. The other points that were mentioned by the Government have been treated at length in the earlier briefs in this case and the question of Supreme Court exclusive jurisdiction and the question of Section 14 of the Upper Colorado River Storage Project Act have all be thoroughly explored and they simply are not in point.

I think that the best answer to both of those points is what the Supreme Court said itself in Arizona v. California. They mentioned the statutory controls that are in the Boulder Canyon Project Act, and they said this:

+ "The Secretary is directed to make water contracts for irrigation and domestic uses only for 'permanent service.' Section 5. He and his permittees, licensees, and contractees are subject to the Colorado River Compact ... and therefore can do nothing to upset or encroach upon the Compact's allocation of Colorado River water between the

Upper and Lower Basins. In the construction, operation, and management of the works, the Secretary is subject to the provisions of the reclamation law, except as the Act otherwise provides. ...And, of course, all of the powers granted by the Act are exercised by the Secretary and his well-established executive department, responsible to Congress and the President and subject to judicial review."

And at that point, the Court cited *Idkes v. Fox* and other cases, such as, the Boesche case, where in this Court here in the District of Columbia has reviewed the act of the Secretary to determine whether or not he is acting beyond his statutory authority.

Certainly here in this case, if on any of the legal grounds we have mentioned he has exceeded his statutory authority -- and we think he clearly has on a number of them, that is, the Administrative Procedure Act and the power versus irrigation uses, and furthermore under *Ickes v. Fox* we say he has exceeded his authority -- if on any one of those grounds after the facts are resolved in this case by a hearing we are sustained, it is clear that we are simply following what the Supreme Court has spelled out as the appropriate manner in which these controversies can be adjudicated.

I have nothing further, Your Honor. Thank you.

THE COURT: Do you wish to rebut, Mr. Green?

MR. GREEN: Yes, Your Honor, if I may.

REBUTTAL ARGUMENT IN SUPPORT OF THE MOTION

MR. GREEN: Your Honor, I would like to point out first that this is not the second time around for this argument. The hearing before Judge Jones was for a preliminary injunction and there, we considered the question of injury to the plaintiff, irreparable injury warranting the issuance of a preliminary injunction.

We did argue that the Court had no jurisdiction and the Court's finding was limited to a statement that it did have jurisdiction for the purpose of entering a preliminary injunction.

It is elementary that at such a hearing, the merits of the case are not before the Court and we can't agree with the plaintiff that that hearing on the question of the propriety of the issuing of the preliminary injunction in any way forecloses this Court from looking into the points we have raised as to its jurisdiction to consider the suit to begin with.

We would like also to point out that the plaintiff is incorrect in finding any type of connection between the



filling of Lake Powell and the Secretary's order. There was a water shortage in this area in 1964. —

As we point out in our brief, Your Honor, there was plenty of water in Lake Mead to supply all demands which would be made by the plaintiff if the Secretary were interested only in satisfying demands made. His purpose was to conserve the water in Lake Mead. At the same time, he was also trying to fill Lake Powell. But he issued an order, which is appended as Exhibit F to the plaintiff's complaint, that under no circumstances would the filling of Lake Powell be permitted to bring Lake Mead below a minimum power operating level of elevation 1,083.

We point out in our brief that there is no causal connection at all between the filling of Lake Powell and the order restricting the amount of water which the plaintiff might divert from Lake Mead.

The plaintiff's argument that there was a violation of the Administrative Procedure Act is incorrect because the Administrative Procedure Act specifically states that its rule-making procedures are not applicable to contracts and that is what we have here, a contract; and furthermore, that its order-making procedures apply to those cases of adjudication required by statute to be determined on the record and.

opportunity for an agency hearing. There is in this case no statute requiring an opportunity for agency hearing, so this matter clearly does not come within the purview of the Administrative Procedure Act.

Finally, we would like to return to our opening argument with respect to the mootness of this case. There is now no order either to be validated or revoked by this Court. It expired midnight at the end of 1964. The plaintiff, so far as I know, has gotten all the water that it has requested this year, and there is nothing to be done with respect to the 1964 order.

The plaintiff has said that he wants a commitment from the Secretary that he agrees that their water usages are not wasteful. Well, of course, such a commitment can't be given. Furthermore, what the Secretary will do in future years should there be water shortages cannot be predicted. This order is past. I don't think that we can expect the Secretary would issue an identical order in the future if there were to be similar emergencies. What he might do in any year in the future can't be predicted.

I therefore submit, Your Honor, that the whole case is moot and, for that reason alone, it ought to be dismissed and, of course, we stand by the other reasons we have

presented for dismissal of the case.

Thank you, Your Honor.

ORAL RULING OF THE COURT

THE COURT: Well, the way I size this case up is this: That all the plaintiff has is a contractual right, that he entered into a contract with the Secretary of the Interior acting as the United States Government in a governmental capacity.

I find no violation of that contract since the Secretary was acting within the limits permitted by the contract.

I find that whatever the Secretary did in the premises, he did in his capacity as Secretary of the Interior -- still acting as Uncle Sam, so to speak -- and that since the Government has not consented to the suit and is asserting the defense of sovereign immunity, I don't see anything in this case that brings it outside of the claim of immunity. I think the Secretary of the Interior was acting within his powers as a governmental agent all the way through. The proper person to be sued here is not the Secretary but the United States, and the United States is claiming sovereign immunity.

In view of that finding, I don't see that I have to get into any of the other collateral questions so I am going

to dissolve the injunction.

I think the plaintiff's remedy, if they feel they have been damaged, is to sue under the Tucker Act or whatever other acts are available for whatever damages they think they have sustained by the action of the Secretary of the Interior.

In any event, I will dissolve the injunction and dismiss the complaint.

Would you submit an appropriate order and would you submit findings within the scope of what I have just stated?


MR. GREEN: Yes, Your Honor.

(Whereupon, the hearing on motion was concluded.)

- - -

#### C E R T I F I C A T E

The foregoing is certified to be the official transcript of proceedings held on November 5, 1965, in the case of Yuma Mesa Irrigation and Drainage District v. Stewart L. Udall, Civil Action No. 1551-64.

  
Eva Marie Sanche  
Official Court Reporter

(HEADING OMITTED)

Civil Action No. 1551-64  
Filed: December 17, 1965

ORDER

This cause came on to be heard on the 5th day of November, 1965 upon motion of the defendant to dismiss.

Upon consideration of the pleadings, memoranda and exhibits submitted by counsel, the arguments of counsel, and this Court, having made its findings of fact and conclusions of law, it is this the 17th day of December, 1965

ORDERED that the motion of defendant to dismiss be and the same hereby is granted, and it is

FURTHER ORDERED that the preliminary injunction heretofore entered in this cause be and the same hereby is dissolved.

/s/ Howard F. Corcoran  
J U D G E

(HEADING OMITTED)

Civil Action No. 1551-64  
Filed: December 17, 1965

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing in open court on November 5, 1965, on defendant's Motion to Dismiss. The defendant contended that the plaintiff's action initiated on June 30, 1964, to enjoin the enforcement of the order of the Secretary of the Interior promulgated in May 1964, whereby the amount of water to be delivered by the defendant to the plaintiff during the balance of the calendar year 1964 would be decreased by ten percent, is now moot because of the expiration of the order, and the action should therefore be dismissed. The defendant further contended that the action should be dismissed because the complaint fails to state a claim upon which relief can be granted, and because the court lacks jurisdiction over the subject matter of the suit.

The plaintiff contended that the defendant's motion to dismiss, having been filed after the defendant's answer, was not timely filed, and may not be considered. The plaintiff also contended that the action is not moot, because the Secretary's order is indicative of his continuing intention to impose restrictions on the plaintiff's consumption of water, and further, that because these restrictions are arbitrary and capricious and beyond the authority of the Secretary to impose, and therefore not the act of the sovereign, this court has jurisdiction over the matter and may enjoin the Secretary.

Having considered the oral arguments made by counsel, in this case, and having reviewed the pleadings, motion to dismiss, and briefs filed by both parties, and having considered "Findings of Fact and Conclusions of Law" proposed by the defendant and the objections thereto by the plaintiff, and being fully advised in the premises, the Court hereby makes findings of fact and states conclusions of law as follows:

FINDINGS OF FACT

1. The plaintiff is a political subdivision of the State of Arizona. The lands of the plaintiff districts are embraced within the boundaries of the first division of the Gila Project as authorized by the President on June 21, 1937, under the Reclamation Law, and of the Yuma Mesa Division of the Gila Project as reauthorized by the Act of July 30, 1947 (61 Stat. 628) which specified that the Unit was to include 25,000 acres of irrigated land.

2. The defendant is the Secretary of the Interior of the United States and is charged with the administration of the laws relating to the storage and delivery of waters of the main stream of the Colorado River.

3. On May 26, 1956, the plaintiff entered into a repayment contract with the United States, whereby the latter agreed, among other things, to deliver to the plaintiff from storage available in Lake Mead

\*\*\* such quantities of water, including all other waters diverted for use within the District from the Colorado River, as may be ordered by the District \*\*\* and as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres situate



therein \*\*\* Provided, however, that the maximum rate of diversion at Imperial Dam of water for delivery hereunder shall be five hundred and twenty (520) cubic feet per second \*\*\*.

The contract is subject, inter alia, to the provisions of the Boulder Canyon Project Act, 43 U.S.C. sec. 617, the Colorado River Compact, H. Doc. 717, 80th Cong., 2d Sess. (1948), and the Mexican Water Treaty, 59 Stat. 1219. The contract is for permanent service.

4. On May 16, 1964, at a press conference in Las Vegas, Nevada, the defendant announced that as a result of unusually low spring runoffs for the second consecutive year, deliveries of water stored in Lake Mead for the remainder of calendar year 1964 to those individuals and organizations having right by contract to divert such water would be reduced by ten percent, this reduction to be implemented by the Bureau of Reclamation. On May 19, 1964, the Regional Director of the Bureau of Reclamation in a letter to the plaintiff advised that the water scheduled for diversion to the plaintiff for the seven months period of June through December 1964 (176,000 acre-feet), would be reduced by 17,600 acre feet to 158,400 acre feet, and that in addition the plaintiff would be charged with all water ordered for a given week and available for diversion at Imperial Dam but not taken. On June 19, 1964, in response to an amended schedule submitted under protest by the plaintiff, the Department of the Interior acting by and through T. H. Moser, project manager of the Yuma Project Office, changed to

163,280 acre feet the volume of water which might be delivered to the plaintiff for the remaining seven months of 1964.

5. On June 30, 1964, the plaintiff filed this action, seeking an adjudication that the order of the Secretary imposing a ten percent cut in the delivery of Colorado River water to the plaintiff is in violation of the law, and should be enjoined. On July 7, 1964, the plaintiff filed a motion for preliminary injunction, which was granted on August 19, 1964.

6. On July 16, 1964, the Regional Director of the Bureau of Reclamation informed the President of the plaintiff organization that it was not the intention of the Bureau of Reclamation that the reduction in diversions be applied in such a manner as to result in the impairment of crop yield to any individual, and that "additional water will be available for delivery to meet individual hardship cases if any develop."

7. The defendant filed his answer to the complaint on October 9, 1964. The Second and Fourth Defenses of the answer specifically alleged that this Court lacked jurisdiction over the subject matter of the action, and the concluding prayer of the answer was that this action be dismissed.

8. On September 1, 1965, the plaintiff filed a certificate of readiness. On September 10, 1965, the defendant filed an Objection to the Certificate of Readiness, and a Motion to Dismiss.

9. No consent has been given by the United States to the filing of an action against it relating to its administration of contracts entered into by it for the delivery to individuals and organizations of Colorado River

water from storage in Lake Mead.

CONCLUSIONS OF LAW

1. The defendant's motion to dismiss was timely filed.
2. The Secretary of the Interior had authority under the Boulder Canyon Project Act, 43 U.S.C. sec. 620, et seq., to enter into the contract with the plaintiff described in finding 3 above. Such contract does not require the delivery to the plaintiff of any specific quantity of water, but only of so much water as may be "reasonably required and beneficially used" by the plaintiff.
3. The Boulder Canyon Project Act, 43 U.S.C. sec. 620, et seq., is a constitutional statutory delegation to the Secretary of the Interior of the power to direct, manage, and coordinate the operation of the installations and projects constructed and operated by the United States along the Colorado River. Arizona v. California, 373 U.S. 546 (1963).
4. The action of the Secretary of the Interior in reducing by ten percent the amount of water which the plaintiff might order during the balance of 1964, and at the same time providing that additional water would be made available to meet such individual hardship cases as might develop, was not a violation of the defendant's obligation to the plaintiff under the contract of May 26, 1956.
5. The action of the Secretary of the Interior in reducing by ten percent the amount of water which the plaintiff might order during the balance of 1964 was within his statutory authority; the statute conferring

upon him the authority is constitutional, and the Secretary of the Interior exercised this authority in a constitutional manner.

6. The action of the Secretary of the Interior in reducing by ten percent the amount of water which the plaintiff might order during the balance of 1964 was the action of the sovereign, and, the sovereign not having consented thereto, may not be enjoined, or otherwise made the subject of any court proceedings. Larson v. Domestic and Foreign Corp., 337 U.S. 682 (1949).

7. The defendant's motion to dismiss should be granted, and the preliminary injunction heretofore entered in this cause should be dissolved.

Let judgment be entered accordingly.

/s/ Howard F. Corcoran

J U D G E

Dec. 17 1965

(HEADING OMITTED)

Civil Action No. 1551-64

ORDER CORRECTING ERROR

Whereas, the citations in lines 16 and 22-23 on page 5 of the Findings of Fact and Conclusions of Law filed December 17, 1965 in Civil Action No. 1551-64 now read:

"Boulder Canyon Project Act, 43 U. S. C.  
sec. 620, et seq."

Whereas, the citations in the foregoing sentences are in error.

NOW THEREFORE, IT IS ORDERED that the foregoing citations are amended to read as follows:

"Boulder Canyon Project Act, 43 U. S. C.  
sec. 617, et seq."

/s/ Howard F. Corcoran

J U D G E

5/18/66

(HEADING OMITTED)

Civil Action No. 1551-64

Filed: February 8, 1966

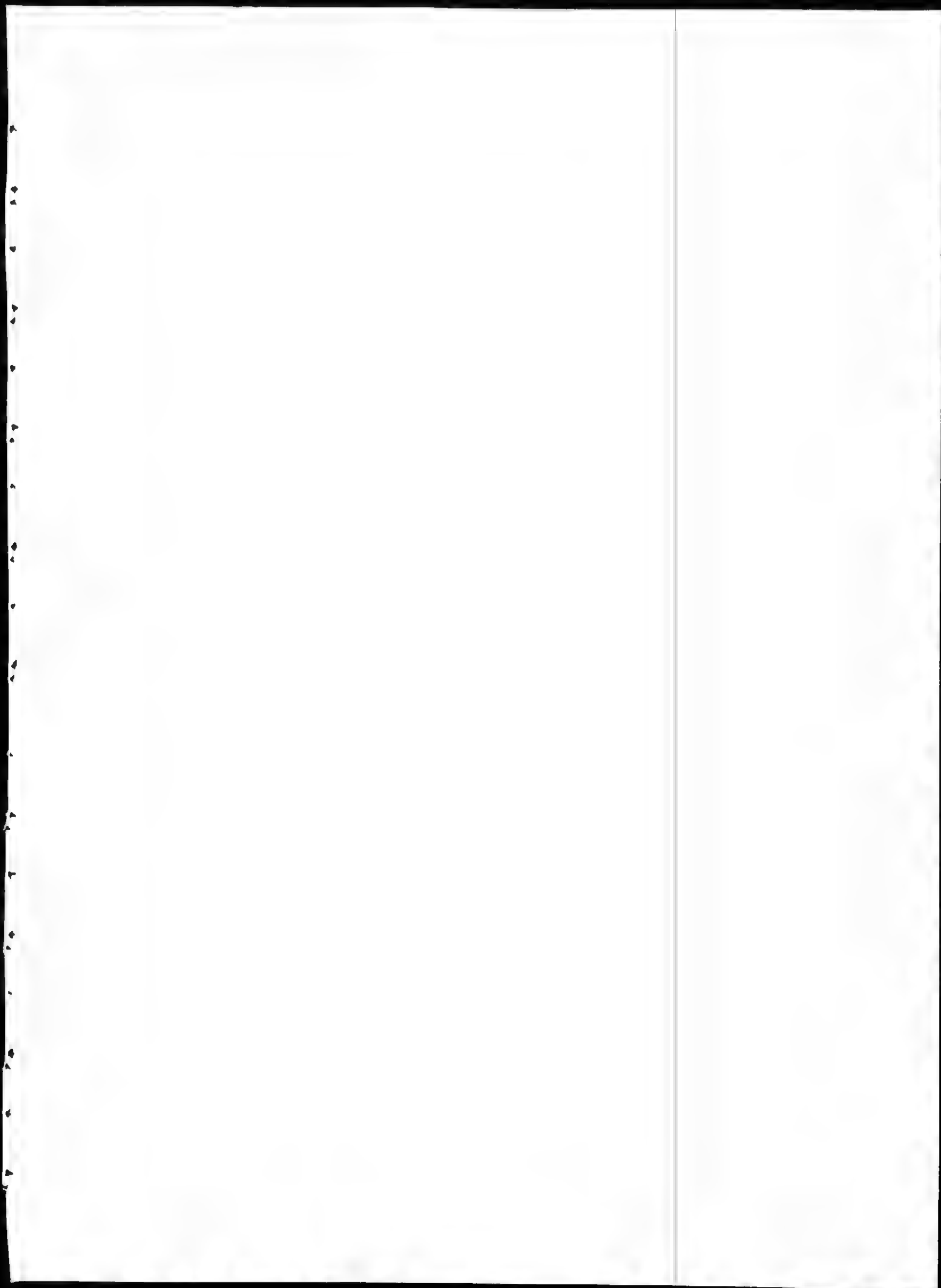
NOTICE OF APPEAL

Notice is hereby given this 8th day of February, 1966, that the Yuma Mesa Irrigation and Drainage District, plaintiff, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the Order of this Court entered December 17, 1965 granting defendant's motion to dismiss and dissolving the preliminary injunction in favor of defendant Stewart L. Udall against said plaintiff.

/s/ Charles F. Wheatley, Jr.  
Charles F. Wheatley, Jr.  
McCarty and Wheatley  
1200 Walker Building  
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Brandt and Baker  
217 Second Avenue  
Yuma, Arizona

Attorneys for Plaintiff





BRIEF FOR APPELLANT

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 20049

---

YUMA MESA IRRIGATION AND DRAINAGE DISTRICT,

Appellant

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR,

Appellee.

Appeal From An Order Of The United States District Court  
For The District of Columbia

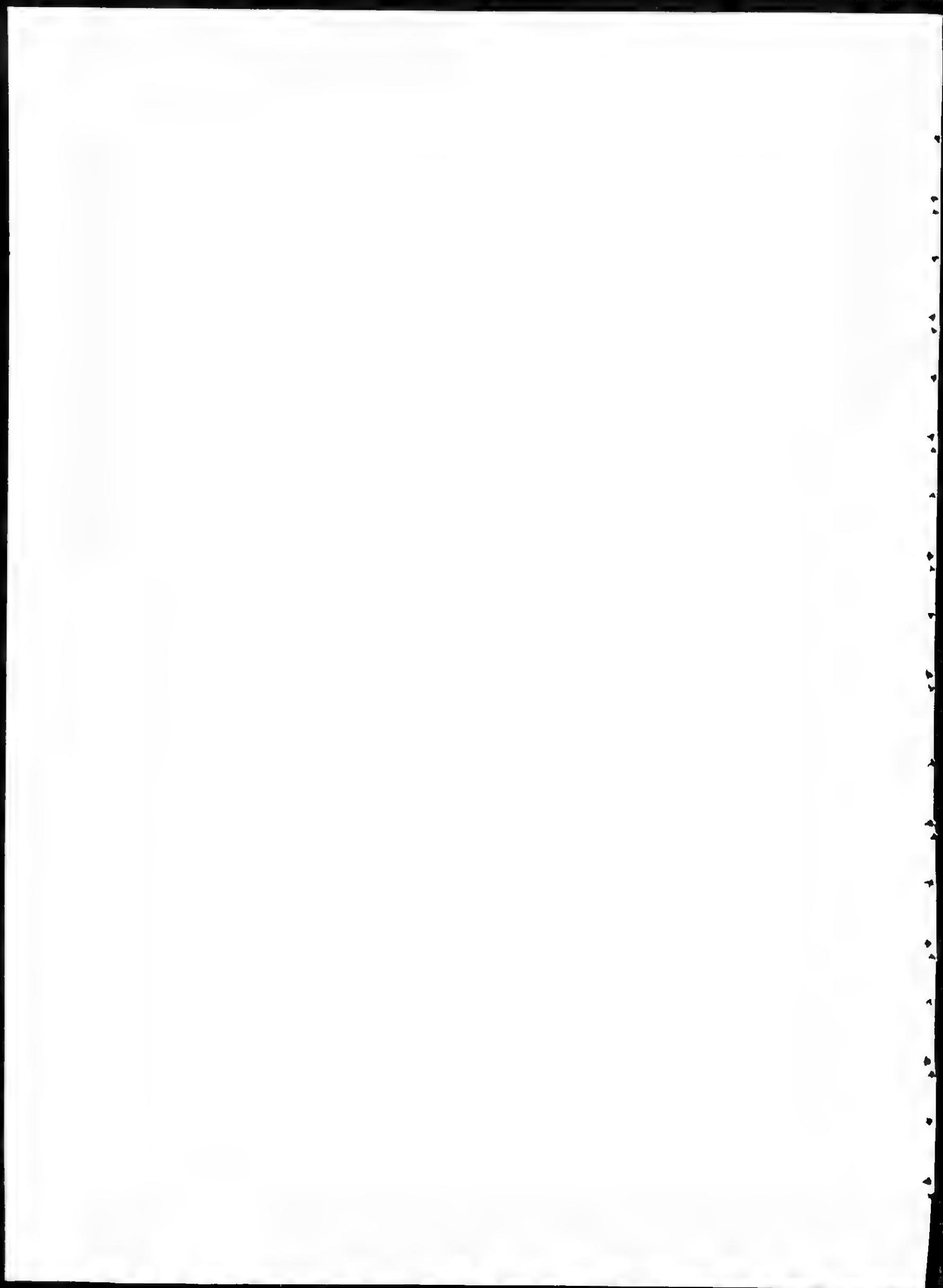
United States Court of Appeals  
for the District of Columbia Circuit

FILED NOV 9 1966

*Nathan J. Paulson*  
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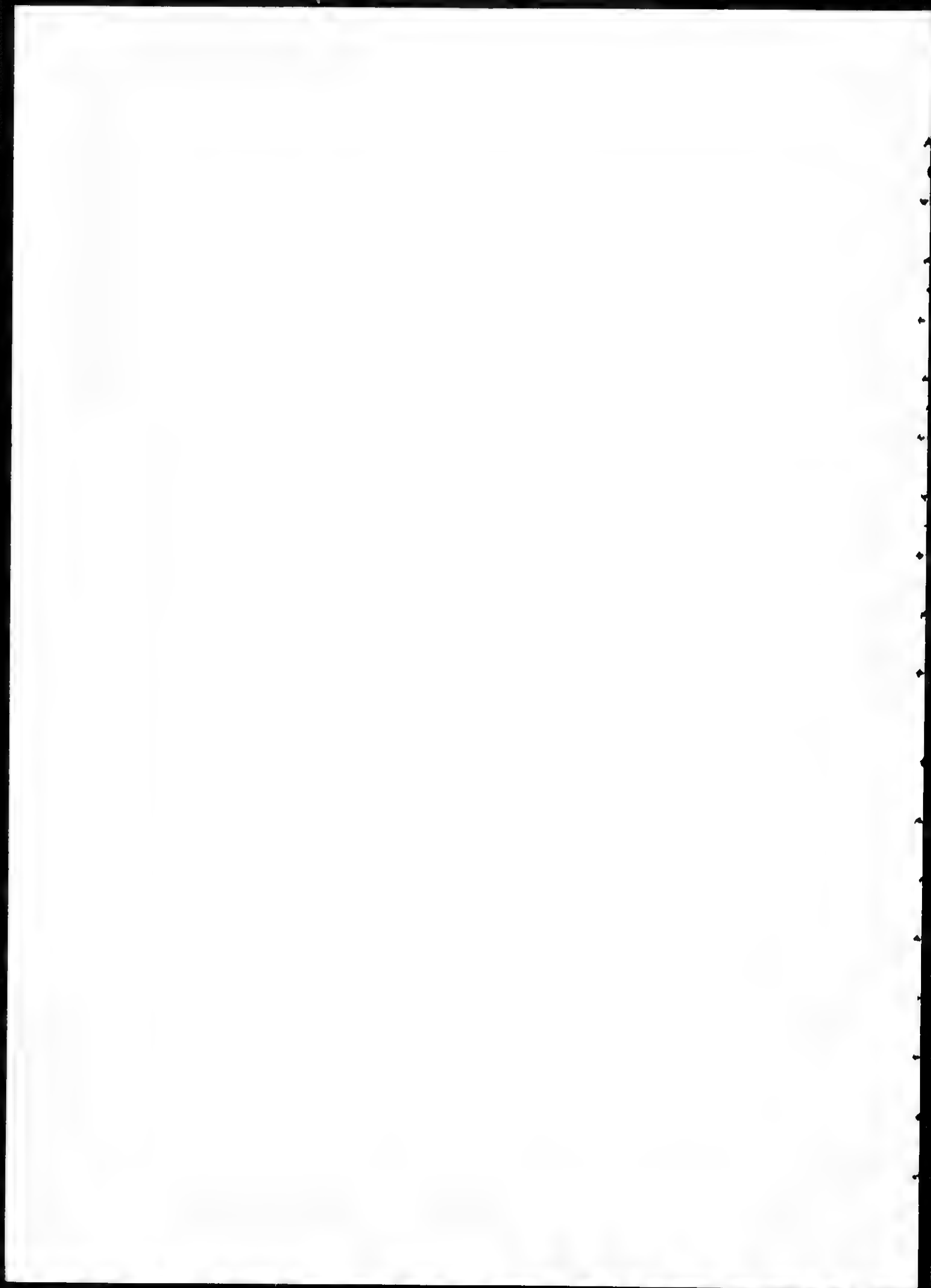
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### QUESTIONS PRESENTED

1. Whether the District Court erred in granting a motion to dismiss without an evidentiary hearing based on findings of fact contrary to the allegations of the complaint and findings made after a full hearing by another Judge on an earlier motion for a preliminary injunction?
2. Whether the Secretary of the Interior violated Section 5 of the Administrative Procedure Act and denied the Appellant procedural due process in ordering a ten percent curtailment in water deliveries from the Colorado River to the Appellant without notice or hearing?
3. Whether the Secretary of the Interior violated the Boulder Canyon Project Act, the Colorado River Compact, and the Colorado River Storage Project Act, by curtailing irrigation uses of Colorado River water to permit the impounding of water behind upstream dams for power purposes?
4. Whether the Secretary of the Interior violated the Boulder Canyon Project Act provisions requiring the delivery of water for permanent service?
5. Whether the Secretary of the Interior violated the allocation of Colorado River water among the Lower Basin States established by the Boulder Canyon Project Act by ordering a blanket reduction of ten percent in all deliveries to Lower Basin users?
6. Whether the Secretary of the Interior's curtailment of water deliveries violated the Mexican Water Treaty?



UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

YUMA MESA IRRIGATION AND DRAINAGE DISTRICT,

Appellant

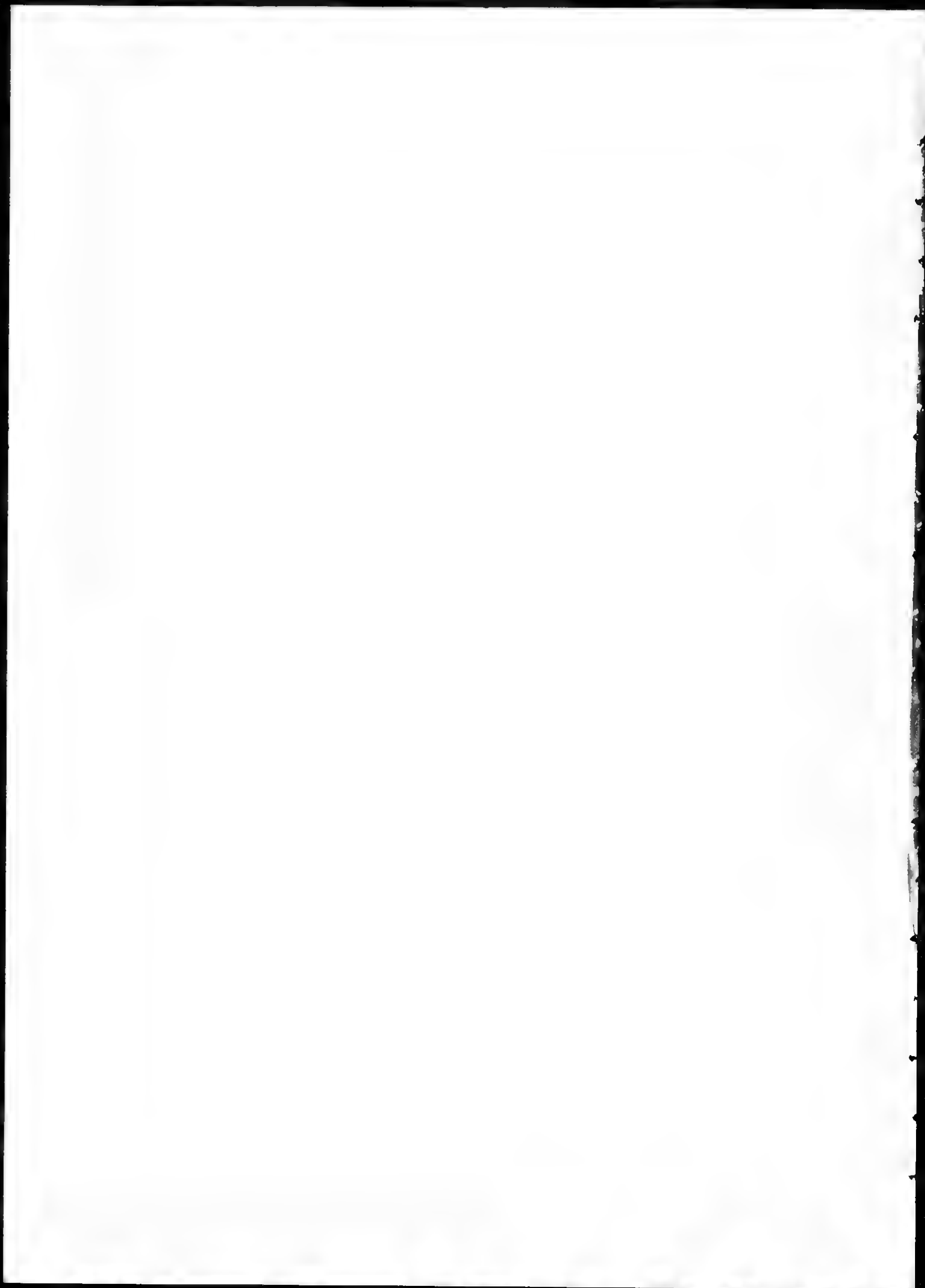
v.

No. 20049

STEWART L. UDALL, SECRETARY OF THE  
INTERIOR,

Appellee

Appeal From An Order Of The United States District Court  
For The District of Columbia



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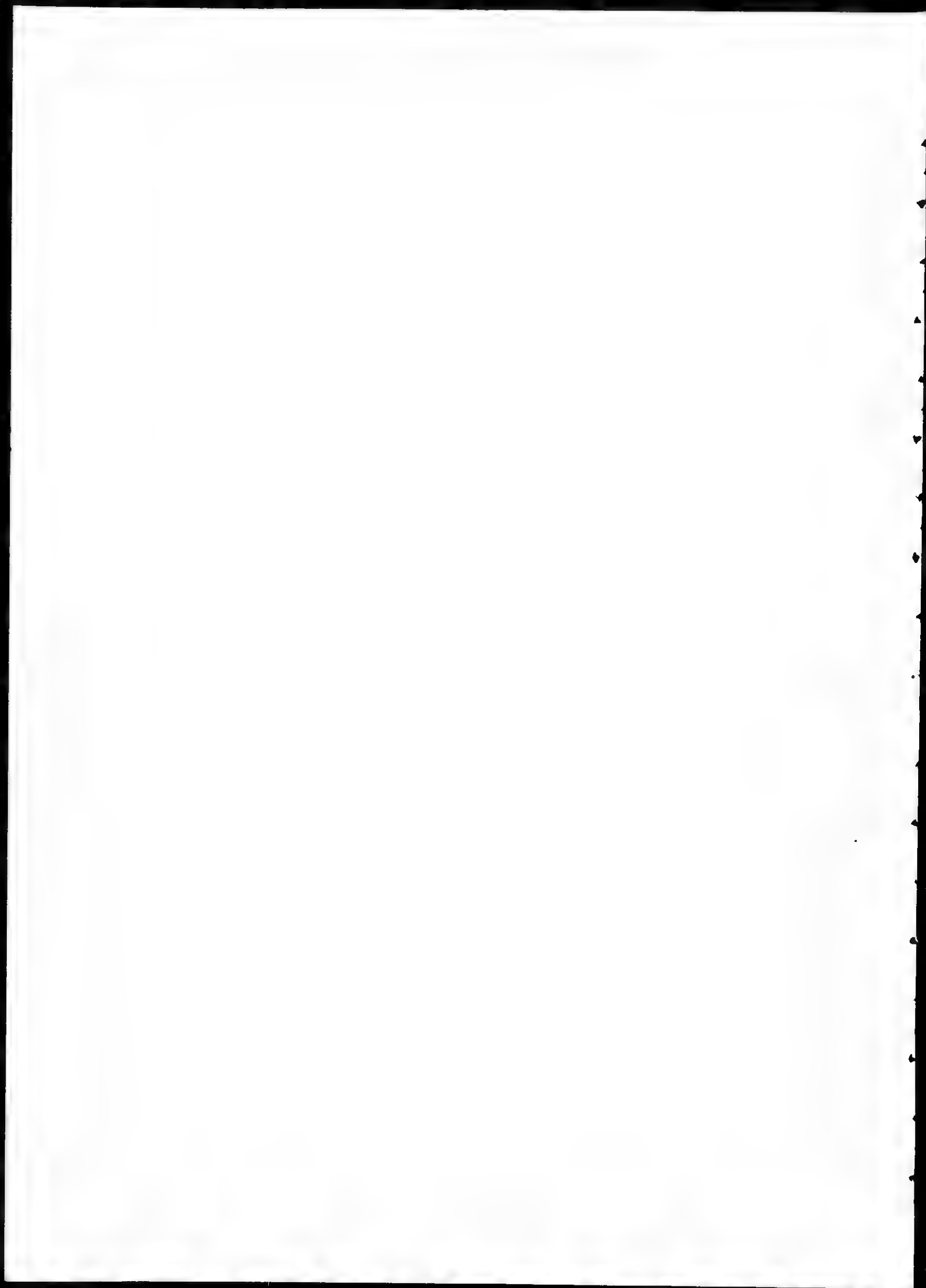
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## JURISDICTIONAL STATEMENT

The jurisdiction of the court below was invoked under Title 11, Section 521 of the D. C. Code (Supp. V, 1966); upon the ground that the matter in controversy exceeds \$10,000, and arises under the laws, treaties and Constitution of the United States (28 U. S. C. §1331); and upon the ground of diversity of citizenship (28 U. S. C. §1332). The pleadings establishing the jurisdiction are at JA 1-2 (Complaint, paras. 2-4) and JA 355 (Answer, Fifth Defense, paras. 2-4). This court has jurisdiction of this appeal from the final decision of the district court by virtue of 28 U. S. C. §1291.

## STATEMENT OF THE CASE

Nature of the Proceeding. Yuma Mesa Irrigation and Drainage District [hereinafter referred to as "District"] is a political subdivision of the State of Arizona. It is located in the arid desert country of Southwestern Arizona and is totally dependent upon irrigation for its agricultural development. The sole source of irrigation water for the District is the Colorado River, the waters of which are under the administrative control of the Secretary of the Interior pursuant to a series of statutes, a treaty, and various agreements which constitute the "law of the river". In May of 1964 the Secretary ordered a ten percent reduction and placed other restrictions upon the water deliveries to the District and all other agricultural users in the Lower Basin States of the Colorado. The District filed an action in the district court to enjoin the Secretary from the enforcement of this order and for its review under the Administrative Procedure

Act. The complaint alleged that the reduction in water deliveries jeopardized the existence and future of the citrus industry and other crops within the District and that it was beyond the Secretary's authority because: (a) it was done without notice or hearing to the District; (b) was for the illegal purpose of curtailing consumptive uses of water to permit the generation of power; (c) was contrary to Sections 5 and 4(a) of the Boulder Canyon Project Act governing District's rights and any allocation of shortages of water; (d) was contrary to the Mexican Water Treaty; and (e) was arbitrary. On August 19, 1964, after receiving affidavits and hearing witnesses, Judge William B. Jones entered a preliminary injunction against the Secretary based upon findings of facts and conclusions of law (JA 347-353). The Secretary answered the complaint on October 9, 1964 (JA 354-358), but on September 10, 1965, filed a motion to dismiss the complaint (JA 364).

The motion to dismiss was argued before another judge of the district court, Judge Howard I. Corcoran, but no testimony or evidence was received. On December 17, 1965, Judge Corcoran dismissed the complaint based on findings of fact contrary to the allegations of the complaint and the findings made by Judge Jones after a full evidentiary hearing (JA 402-408). This order is reported at 253 F. Supp. 909. The District has appealed to this court.

1. Facts as set forth in the Complaint

The lands within the District are a part of the Yuma Mesa Division of the Gila Project which was originally authorized by Congress in 1937 and re-authorized in 1947 (61 Stat. 628). These lands are currently known as the Yuma



Mesa Unit of the Gila Project. Water for the project is diverted from the Arizona end of the Imperial Dam (a diversion dam on the Colorado River) from which it is pumped at the Yuma Mesa Pumping Plant into a canal supplying the distribution laterals that serve the District. The water rights for lands in the District were initiated by appropriations, dating back to 1905, made by the Federal Government under Arizona Law pursuant to the Reclamation Act. <sup>1/</sup> (JA 2-3.)

On May 26, 1956, the District entered into a contract with the United States for repayment of the costs of the distribution facilities which had been constructed by the Government. By this contract the United States bound itself to deliver from storage in Lake Mead "such quantities of water ... as may be ordered by the District and as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres" in the District. <sup>2/</sup> This contract is for permanent service, and from 1956 through early 1964 the Secretary delivered to the District the quantities of water requested by it (JA 4). It is also subject, inter alia, to the provisions of the Boulder Canyon Project Act the Colorado River Compact, and the Mexican Water Treaty. (JA 3-4, 15-18.)

On May 16, 1964, at a press conference in Las Vegas, without notice or hearing, the Secretary announced that he was ordering a ten percent reduction in water deliveries effective June 1, 1964, to all water user agencies in the Lower

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<sup>1/</sup> Act of June 17, 1902, 32 Stat. 388, as amended, 43 U.S.C. § 371, et seq.

<sup>2/</sup> As of 1964, approximately 17,000 acres in the District were under irrigation. About 5,000 acres of this land had been leveled and developed by the United States after water became available in 1943. It was then opened to homesteading by veterans in 1945. (JA 3.)

Basin of the Colorado River, including the District, to be implemented by the Bureau of Reclamation. On May 19, 1964, the Regional Director of the Bureau in a letter to the District advised that the water scheduled for diversion to the Appellant for the seven month period of June through December, 1964 (176,000 acre-feet) would be reduced by 17,600 acre-feet to 158,400 acre-feet <sup>3/</sup> and that in addition, this quantity would be reduced by amounts of water ordered by the District, but which, because of a change in the weather or other circumstances prior to delivery thereof, could not be used by the District. Subsequently, the Yuma Project Office of the Bureau, by letter of June 19, 1964, further informed the District that all drainage wells must be credited against the proposed water order and directed that the reduced water order for the remaining seven months of the year would be 163,280 acre-feet or 12,720 acre-feet less than requested by the District. (JA 4-5, 20-23.)

The complaint alleged that this curtailment in water deliveries jeopardized the existence and future of the citrus industry and other crops within the District. It also asserted that the District was not wasting water because all water entering its completely lined closed irrigation distribution system ends up and is used at farm level. (JA 5-6.)

The District also alleged that the curtailment of the District's irrigation uses ordered by the Secretary was without notice or hearing and was in fact for the purpose of storing water in the upstream Lake Mead and Lake Powell reservoirs on the Colorado River for the generation of power, contrary to the statutes

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3/ An acre foot of water is enough to cover an acre of land one foot deep.

controlling the Secretary in the operation of those reservoirs. (JA 6-9, 24-42.)

The complaint further alleged that users in California were using in excess of the 4,400,000 acre-feet specified in Section 4(a) of the Boulder Canyon Project Act, while users in Arizona were using well below the 2,800,000 acre-feet therein allocated, so the Appellee's order reducing Appellant, an Arizona user, equally with California users, violated the mandatory language of the Project Act (JA 9). Furthermore, the complaint alleged that the Appellee had curtailed users in the United States without curtailing deliveries to Mexico in violation of the Mexican Water Treaty (JA 9-10).

## 2. Proceedings on Issuance of Preliminary Injunction

The case came before Judge William B. Jones on Appellant's motion for a preliminary injunction on August 12, 1964. <sup>4/</sup> Judge Jones, after hearing testimony and considering the affidavits and briefs before him, granted a preliminary injunction (JA 347-353). He rejected the detailed contentions of the Secretary, challenging the jurisdiction of the court, and he concluded:

1. This court has jurisdiction to hear and determine plaintiff's motion for preliminary injunction.
2. The plaintiff has made a strong showing that it is likely to prevail on the merits at the final hearing.
3. A preliminary injunction pending final hearing in the action is necessary to prevent what otherwise might be irreparable injury to plaintiff's crops. (JA 352.)

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<sup>4/</sup> The motion with supporting affidavits was filed July 8, 1964 (See JA 45-79); Appellee made a detailed response with supporting affidavits on July 27, 1964 (see JA 80-229) and Appellant replied on August 10, 1964 (See JA 230-235).

In so ruling, Judge Jones had before him a letter of July 16, 1964 by the Regional Director of the Bureau of Reclamation to the District after suit was filed wherein the Bureau stated that "additional water will be available for delivery to meet individual hardship cases if any develop". (JA 197-198.) Based on the testimony and affidavits in the evidentiary hearing, Judge Jones found that due to the size of the distribution canals and the time required to get water to the farms, it would not physically be possible to get water to the growing crops (which would have otherwise been there but for the Secretary's curtailment order) quickly enough to prevent irreparable harm. <sup>5/</sup> Judge Jones ruled:

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5/ Judge Jones' findings of fact, inter alia, were as follows:

13. That the water demand for citrus and other crops grown upon the lands within the district is not a constant one but depends upon cropping patterns, soil, and weather conditions.

14. That both a citrus crop and citrus orchards are sensitive to demands for water and under extreme weather conditions not uncommon in the area are subject to damage and crop loss within periods ranging from 24 to 48 hours without water.

15. That the conveyance system of the plaintiff is not of uniform size and the district serves approximately 6,600 acres by lateral 16 to 32 cubic feet per second in size.

16. That by reason of the foregoing, a water cutback pursuant to the defendant's May 16, 1964 order might place the citrus orchards upon the Mesa in a condition of extreme peril.

17. That by reason of the limitations above set forth, water cannot be made available on short notice to protect the crops from damage. (JA 350-351.)

It can be said of the government that "If you have an emergency, let us know, and we will put some water down your ditch." Well the testimony here that I am inclined to accept, which may have been Mr. Smith's, is that you can't get it down the ditch when somebody else up the ditch has to use it 41 hours or three days or something like that to get their water. (JA 345.) 6/

Judge Jones further ruled that there was no showing of any wastage of water:

... The government says they haven't been using it wisely, and therefore they have been wasting it.

I of course make no final findings on a preliminary injunction. I don't think the government has made a case on that, at least at this stage. (JA 344-345.) 7/

In addition, based on the evidence before him, Judge Jones also made certain findings of fact relating to other issues raised in the complaint:

7. Prior to the announcement, [of the curtailment], the users were afforded no notice of his action by publication in the Federal Register, nor a hearing. At the time of announcing the order, the Secretary admitted that there had been no completed study of conservation practices on the individual projects in the Lower Basin and stated further that "there is an element of arbitrariness in the approach we have taken." (JA 349.) 8/

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6/ Testimony relating to this matter is at JA 263-295, 303-304. See also JA 47-72, 239, 253, 261-262, 346.

7/ Testimony relating to this matter is at JA 263-295, 305, 316-317, 324-325.

8/ This was based on the transcript of the remarks of the Secretary of the Interior in reply to a question by Governor Brown of California at the press conference in Las Vegas on May 16, 1964:

Governor Brown: ... The Secretary has made it very clear this ten percent reduction, but there is one thing, Mr. Secretary, that we would like very much to have in California.

foofnote continued

\* \* \* \*

21. Due to the low water levels at Lake Powell and Lake Mead on May 11, 1964, the defendant closed the gates at Glen Canyon Dam in order to bring Lake Powell to minimum operation level. On May 16, 1964, the defendant announced the ten percent reduction to Lower Basin users in order to replenish the waters in Lake Mead. (JA 352.) 9/

3. Answer to Complaint by Appellee.

The Appellee answered the complaint on October 9, 1964 (JA 354-358).

The answer posed a number of issues of fact: (1) whether the District was wasting water and whether the Secretary's curtailment order could result in damage to the citrus industry and other crops in the District (JA 356; see JA 46); (2) whether the Secretary had conceded that he did not undertake even an ex parte investigation of the water using practices of the District before issuing his order (JA 356; see JA 6); and (3) whether the purpose of the Secretary's order curtailing consumptive uses of water for irrigation was to permit him to

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footnote 8/ continued:

We would like to have you make a study of the conservation practices immediately so that in the future if it becomes necessary to cut down that it wouldn't be based upon an arbitrary order but would be based upon a factual situation.

Would that be possible?

SECRETARY UDALL: Governor, I think this is a very good point and I think that we should carry it out and I know Mr. West and his people are going to have to do a lot of work and they are going to have to have a lot of inquiry into a lot of practices and problems that are common in the Basins, and I think there is an element of arbitrariness in the approach that we have taken perhaps, but in terms of carrying something out our choices are limited at this time. (JA 46.)

9/ Testimony relating to this issue is at JA 237-238, 241-243, 313-315.

store water at the upstream Lake Mead and Lake Powell reservoirs for the generation of power (JA 356-357; see JA 6-9). Each of these issues of fact posed by Appellee's answer had been preliminarily resolved contrary to Appellee by Judge Jones after hearing testimony, on granting the District's motion for a preliminary injunction. (See supra, pp. 7-8.)

4. Proceedings on Appellee's Motion to Dismiss.

Eleven months after filing the answer to the complaint, the Secretary filed a motion to dismiss the complaint on September 10, 1966 (JA 364). <sup>10/</sup> The grounds set forth in the motion to dismiss were identical for the most part to those asserted by the Secretary before Judge Jones in opposition to the District's earlier motion for preliminary injunction.

Without hearing testimony or receiving affidavits, the motion to dismiss the complaint was granted by Judge Corcoran in an order filed December 17, 1965, based on "Findings of Fact and Conclusions of Law" (JA 402-409). These findings and conclusions finally resolved all of the issues of fact posed by the answer to the complaint against the District, contrary to the allegations of the complaint, and contrary to the express findings by Judge Jones in issuing

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<sup>10/</sup> On September 1, 1965, the District, acting pursuant to the District Court rules, had filed a Certificate of Readiness to place the matter on the trial calendar (JA 362). The Secretary filed an objection to the Certificate of Readiness at the same time he filed his motion. (JA 363.)



a preliminary injunction based on testimony and affidavits. 11/

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11/ Judge Corcoran's "Findings of Fact and Conclusions of Law" relating to the issues whether the Secretary's curtailment order could result in damage to the crops in the District, or whether the District was wasting water, provided as follows:

6. On July 16, 1964, the Regional Director of the Bureau of Reclamation informed the President of the plaintiff organization that it was not the intention of the Bureau of Reclamation that the reduction in diversions be applied in such a manner as to result in the impairment of crop yield to any individual, and that additional water will be available for delivery to meet individual hardship cases if any develop. (JA 406.)

\* \* \* \*

4. The action of the Secretary of the Interior in reducing by ten percent the amount of water which the plaintiff might order during the balance of 1964, and at the same time providing that additional water would be available to meet such individual hardship cases as might develop, was not a violation of the defendant's obligation to the plaintiff under the contract of May 26, 1956. (JA 407.)

With respect to the issues whether the purpose of the Secretary's order was to store water for power production at the upstream reservoirs and whether it was arbitrarily issued without a hearing, Judge Corcoran's findings and conclusions provided:

4. On May 16, 1964, at a press conference in Las Vegas, Nevada, the defendant announced that as a result of unusually low spring runoffs for the second consecutive year, deliveries of water stored in Lake Mead for the remainder of calendar year 1964 to those individuals and organizations having the right by contract to divert such water would be reduced by ten percent. ... (JA 405.)

\* \* \* \*

5. The action of the Secretary of the Interior in reducing by ten percent the amount of water which the plaintiff might order during the balance of 1964 was within his statutory authority; the statute conferring upon him the authority is constitutional, and the Secretary of the Interior exercised this authority in a constitutional manner. (JA 407-408.)

Before Judge Corcoran the Secretary asserted that the case was moot because the Secretary's curtailment order of May 16, 1964 was for a seven month period to expire at the end of December 1964. With respect to this matter counsel for the District at the oral argument before Judge Corcoran on November 5, 1965, noted the statement in the Government's brief that "at the present time in the Colorado River Basin there is a severe shortage of water," and then asked:

Does the Government now contend that the plaintiff is wasting water and making an unreasonable use of water. (JA 369.) 12/

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12/ Counsel for District further stated:

At page 24 [of its motion to dismiss], it is quite clear that the Government does intend to proceed with what they call a water conservation program affecting the plaintiff in this area.

The whole controversy in this case came about because the Government said we were wasting water in our irrigation District there, and the plaintiff contended that we weren't wasting water, that we were using water reasonably and efficiently. Now, that was the heart of this case. Were we wasting water or were we making the use of water to which we were entitled under our water delivery contract which calls for permanent service from the United States?

At the time of the preliminary hearing, Judge Jones heard evidence of fact on the case and he determined at that time, at least for purposes of the preliminary injunction, that the evidence did not establish that we were wasting water and for that reason, he entered a preliminary injunction.

We say that unless the Government will state now at this point that they don't contend that the Yuma Mesa Irrigation District is wasting water in their irrigation function, if they will make that admission that they are not at this moment proceeding with some sort of the similar type of conservation program that was embodied in the May 16 order, then the case is not moot. (JA 369-370.)

footnote continued

Judge Corcoran apparently believed that the case was not moot because his order dismissing the action was based on the merits of the case. <sup>13/</sup>

On February 8, 1966, the District duly filed notice of appeal from Judge Corcoran's decision. (JA 410.)

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footnote 12/ continued:

This was based on the ruling by this Court that the expiration of an order which evidences a continuing intent does not remove the substance of the cause of action. *Fox v. Ickes*, 78 U.S. App. D.C. 84, 137 F.2d 30, 32 (D.C. Cir. 1943), cert. denied, 320 U.S. 792.

In reply, counsel for the Secretary stated:

The plaintiff has said that he wants a commitment from the Secretary that he agrees that their water usages are not wasteful. Well, of course, such a commitment can't be given. ... (JA 399.)

<sup>13/</sup> When a case is dismissed as moot the judgment is not upon the merits and has no res judicata effect as to future proceedings. Similarly, when mootness is established on appeal, the "established practice" is to dispose of the case, not merely the appellate proceedings which brought it there, and, to do so, "to reverse the judgment below with directions to dismiss the bill, complaint, or petition." *Brownlow v. Schwartz*, 261 U.S. 216, 218 (1923); *United States v. Anchor Coal Co.*, 279 U.S. 812 (1929); *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950); *McKay v. Clackamas County*, 349 U.S. 909 (1955); *Garcia v. Landon*, 348 U.S. 866 (1954); *Bryan v. Austin*, 354 U.S. 933 (1957); see Scott, Collateral Estoppel by Judgment, 56 Harv. L. Rev. 1, 16. Thus, Judge Corcoran by his action, clearly could not have considered the case moot.

## CONSTITUTIONAL AMENDMENT, STATUTES, AND TREATY PROVISIONS INVOLVED

The statutes, treaty and provision of the Constitution involved are set forth in Appendix A.

### STATEMENT OF POINTS

1. The District Court properly assumed that it has jurisdiction to determine whether the Secretary exceeded his statutory authority or acted arbitrarily in curtailing the deliveries of water to the District.
2. The Court erred in dismissing the action based on "Findings of Fact" contrary to the allegations of the complaint and material of record.
3. The announcement of the curtailment by the Secretary without notice or hearing to Appellant, constituted illegal, arbitrary action depriving Appellant of its rights to the use of Colorado River water in violation of Section 5 of the Administrative Procedure Act and the Fifth Amendment to the Constitution.
4. The Appellant's order curtailing Appellant's consumptive uses to permit the impounding of water upstream at Glen Canyon Dam (Lake Powell) for power purposes exceeds his lawful authority.
5. The Secretary's order violates Section 5 of the Boulder Canyon Project Act requiring the delivery of water for 'permanent service' under irrigation contracts.

6. The Secretary's order instituting an equal pro rata reduction for consumptive users in the Lower Basin is contrary to the mandate of Section 4(a) of the Project Act establishing priorities between users in Arizona and California.

7. The Secretary's order of May 16 is arbitrary in view of his failure to comply with the Mexican Water Treaty.

#### SUMMARY OF THE ARGUMENT

It is quite clear that the District Court has jurisdiction to review actions of the Secretary of the Interior which are arbitrary, capricious or otherwise beyond his statutory authority. This basic principle is established by a long line of decisions both in this Court and the Supreme Court. In this case, the Appellant contends that the Secretary's order reducing water deliveries to it was beyond his statutory authority. The complaint alleged facts which if accepted, would establish that this order was unlawful and thus within the power of the Court to set aside.

It is also beyond dispute that for the purpose of a motion to dismiss, all the well pleaded facts in the complaint must be accepted as true, and herein lies the basic error in the District Court's action. In granting the motion to dismiss, the District Court based its order on a finding that additional water would be made available to meet individual hardship cases so there was no violation of the Secretary's obligation to deliver water. This finding is contrary to the allegations of the complaint that the curtailment would reduce the amount of water available to the District below that necessary for existing citrus and

other crops, thus causing irreparable harm to the District's water users.

It is also squarely contrary to the findings of Judge Jones, made after a full evidentiary hearing on the District's motion for a preliminary injunction, that it would be impossible to get additional water to the farmers (which would have been available but for the curtailment) in time to prevent any irreparable loss of crops. It was improper for the Court to ignore these allegations and earlier findings in passing on the motion to dismiss, and for this reason alone, the case should be remanded.

Assuming the facts set out in the complaint and sustained by the findings on the motion for a preliminary injunction, the Secretary exceeded his lawful authority in a number of ways. First, the order was issued without notice or hearing and without even an ex parte investigation into the water use practices and policies of the various districts affected by it. The water rights of the Appellant are property rights, either acquired under Federal law or under the laws of the State of Arizona. The source of the right is unimportant. What is important is the well established principle that property cannot be taken arbitrarily and without the notice and hearing required by the Fifth Amendment and in accordance with the Administrative Procedure Act.

Second, the Boulder Canyon Project Act which established the priorities of use of Colorado River water, expressly subordinates power generation to consumptive uses for irrigation and domestic purposes, as does also the Colorado River Compact and the Colorado River Storage Project Act. The facts alleged in the complaint and found by the District Court in its order issuing the

preliminary injunction make it clear that the Secretary of the Interior curtailed irrigation and domestic uses in order to accumulate water at the upstream Glen Canyon Dam for power generation.

Third, Section 5 of the Boulder Canyon Project Act expressly requires that the contracts respecting water for irrigation and domestic purposes shall be for permanent service. This provision represents a judicially enforceable limit on the authority of the Secretary. In the present case, the curtailment of deliveries which are reasonably required by the District's water users and which are not being wasted constitutes a direct violation of this mandate.

Fourth, the Boulder Canyon Project Act, as construed by the Supreme Court in Arizona v. California, allocated a portion of the mainstream waters of the Colorado among Arizona, California, and Nevada in specific amounts. California is currently receiving water substantially in excess of her 4,400,000 acre-feet, but Arizona has never used the 2,800,000 acre-feet to which she is entitled. In times of shortage, no State is to receive in excess of its entitlement. However, on the basis of an alleged water shortage, the Secretary reduced all users in all three States by 10 percent. To the contrary, the law requires that whatever reduction may be necessary be imposed first upon the State over its entitlements, not upon all users without regard to their State.

Fifth, the water treaty between the United States and Mexico requires that in times of shortage, deliveries to Mexico shall be reduced in proportion to the reduction of consumptive uses in the United States. In spite of this limitation, the Secretary reduced United States users alone, at a time when



Mexico was receiving substantially more water than is called for in the Treaty or ordered by Mexico.

### ARGUMENT

I. THE DISTRICT COURT, WHILE ASSUMING IT HAD JURISDICTION TO REVIEW THE SECRETARY'S ACTION, IMPROPERLY BASED ITS DETERMINATION UPON A RESOLUTION OF CONTESTED ISSUES OF FACT CONTRARY TO THE ALLEGATIONS OF THE COMPLAINT AND PRELIMINARY INJUNCTION OF RECORD WITHOUT ACCORDING APPELLANT AN EVIDENTIARY HEARING.

A. The District Court properly assumed that it has jurisdiction to determine whether the Secretary exceeded his statutory authority or acted arbitrarily in curtailing the deliveries of water to the District.

While the decision of the court below does not state so expressly, it clearly appears based on the premise that the District Court does have jurisdiction to determine whether the Secretary exceeded his statutory or constitutional authority or acted arbitrarily in curtailing deliveries of water to the District. "Conclusions of Law" Nos. 2 through 5 all deal specifically with determinations as to whether the Secretary exceeded his statutory or constitutional authority.(JA 407-408.) Only after first concluding on the merits that the Secretary was acting lawfully did the court below then reach the ultimate conclusion stated in Conclusion No. 6 to the effect that the Secretary's action in curtailing deliveries to the District "was the action of the sovereign, and, the sovereign not having consented thereto, may not be enjoined, or otherwise made the subject of any court proceedings. *Larson v. Domestic and Foreign Corp.*, 337 U.S. 682." (JA 408.) As this court has made clear in its en banc decision in West Coast Exploration Co. v. McKay, 93 U.S. App. D.C. 307

213 F.2d 582 (D.C. Cir. 1954), cert. denied, 347 U.S. 989, the Larson case is not a jurisdictional bar to a suit to compel the Secretary of the Interior to comply with a statutory duty, but would apply only if, after review on the merits, a determination is made that the Secretary acted within his statutory authority, not in excess of such authority. This court's interpretation in the West Coast Exploration Co. case makes it clear that if the facts in the Larson case had supported a charge of administrative action in excess of statutory authority, rather than action within such authority, the defense of sovereign immunity would have been unavailable. <sup>14/</sup>

In the present case, the Appellant contends that the action of the Secretary in ordering a reduction in water deliveries was clearly ultra vires in that it exceeded the limitations on his authority in the Boulder Canyon Project Act specified by the Supreme Court in Arizona v. California, as well as other statutory, treaty, and constitutional limitations.

B. The court erred in dismissing the action based on "Findings of Fact" contrary to the allegations of the complaint and material of record.

The court, in granting the motion to dismiss, entered "Findings of Fact" on disputed factual matters contrary to the allegations of the complaint and the express findings to the contrary by Judge Jones (after hearing testimony) in issuing a preliminary injunction.

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<sup>14/</sup> Subsequent decisions of the Supreme Court have reaffirmed the principle that unlawful acts of the Secretary may be set aside upon judicial review. See e.g. Arizona v. California, 373 U.S. 546, 584-85 (1963); Boesche v. Udall, 373 U.S. 472 (1963); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); Ickes v. Fox, 300 U.S. 82, 96-97 (1937).

A key factual issue is whether the Secretary's order curtailing deliveries of water to the District would cause irreparable harm to the citrus crops in the District. The allegations of the complaint in this regard by the District that it is not wasting any water and that the amounts previously used are necessary for growing existing citrus and other crops (JA 46), were expressly affirmed by Judge Jones in his "Findings of Fact" based on testimony for both parties as well as the affidavits on file, despite the self-serving contentions of the Secretary, expressed in the letter of the Regional Director of the Bureau of Reclamation of July 16, 1964 after the suit was filed. Contrary to the statement of that letter, Judge Jones found that due to the irrigation procedures, the size of the District's canals, and the timing of the need for water, it would be impossible to get additional water to the farmers (which would have been there, but for the curtailment) in time to prevent any irreparable loss of crops. (See supra, pp. 6-7; JA 345, 350-353.) <sup>15/</sup> These findings were amply supported by the testimony and affidavits before Judge Jones. (See footnotes 6, 7, pp. 7, supra.)

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<sup>15/</sup> As noted above, Judge Jones ruled:

It can be said of the government that "If you have an emergency, let us know, and we will put some water down your ditch." Well, the testimony here that I am inclined to accept, which may have been Mr. Smith's, is that you can't get it down the ditch when somebody up the ditch has to use it for 41 hours or three days or something like that to get their water. (JA 345.)

\* \* \* \*

The government says they [the District] haven't been using it wisely, and therefore they have been wasting it.

I, of course, make no final findings on a preliminary injunction. I don't think the government has made a case on that, at least at this stage. (JA 344-345.)

Despite this, Judge Corcoran, without any testimony or affidavits, resolved the disputed factual issues contrary to the District in granting Appellee's motion to dismiss. In finding of Fact No. 6, Judge Corcoran set forth the allegations of the July 16, 1964 letter (JA 359-361) from which he concluded that additional water could be made available to meet individual hardship cases within the District so that there was no violation of Appellee's obligation to the Appellant to deliver water (Conclusion No. 4). (JA 406, 407.)

Furthermore, two other factual disputes were apparently resolved by Judge Corcoran on the motion to dismiss contrary to the allegations of the complaint and express findings of Judge Jones. Based on the testimony and affidavits before him at the hearing on preliminary injunction, Judge Jones confirmed in findings of fact the allegations of the complaint to the effect that the Secretary's order had been given without notice or hearing to the District, without any completed study of conservation practices in the Lower Basin (Finding No. 7, JA 349), and the allegations that the curtailment order was directly related to the closing of the gates upstream at Glen Canyon Dam to bring up the level of Lake Powell for the purpose of generating power (Finding No. 21, JA 352). While Judge Corcoran's findings and conclusions are not clear on these issues, they might be construed as ruling that the purpose of the irrigation curtailment order was not related to power production at the Lake Mead and Lake Powell reservoirs (see Conclusion 2, JA 407), and as a

rejection of the allegations related to lack of notice and hearing when he concluded that the Secretary's curtailment order was within his statutory authority and "exercised . . . in a constitutional manner." (Conclusion 5, JA 407-408.)

It was clearly improper for the District Court on a motion to dismiss to resolve genuine issues of fact posed by the complaint contrary to the Appellant. <sup>16/</sup> Farrall v. District of Columbia Amateur Ath. Union, 80 U.S. App. D.C. 396, 153 F.2d 647 (1946). Having been deprived of any semblance of a hearing before the Department prior to curtailment of its water requirements, the District cannot be judicially deprived of the opportunity to show that the Secretary's order would result in irreparable loss to the growing crops and was thus in violation of his obligation to deliver water in the District; was without a hearing; and was for the purpose of power production at the upstream reservoirs. Ickes v. Fox, 300 U.S. 82, 96-97 (1937); Fox v. Ickes, 137 F.2d 30 (D.C. Cir. 1943), cert. denied, 320 U.S. 792; First National Bank of Smithfield v. Saxon, 352 F.2d 267, 271-72 (4th Cir. 1965).

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<sup>16/</sup> The Appellee below expressly conceded in its motion to dismiss that:

"In considering this motion to dismiss the court must, of course, assume the truth of all material and well pleaded allegations of fact in the complaint. . . ."

II. ASSUMING THAT THE FACTS AS STATED IN THE COMPLAINT AND SUSTAINED BY THE PRELIMINARY FINDINGS OF RECORD ARE TRUE, THE COURT IMPROPERLY GRANTED THE MOTION TO DISMISS BECAUSE THE SECRETARY EXCEEDED HIS LAWFUL AUTHORITY ON A NUMBER OF DIFFERENT GROUNDS.

A. The announcement of the curtailment by the Secretary without notice or hearing to Appellant, constituted illegal, arbitrary action depriving Appellant of its rights to the use of Colorado River water in violation of Section 5 of the Administrative Procedure Act and the Fifth Amendment to the Constitution.

Prior to his oral announcement at a press conference in Las Vegas on May 16, 1964 of his mandatory ten percent reduction on consumptive use water deliveries, the Secretary accorded the District no notice of the order or opportunity for a hearing. Further, the Secretary admitted that the order was issued without even an ex parte investigation by his Department of the respective water using practices and policies in the various projects in the Lower Basin. The following colloquy with Governor Brown of California makes this clear:

"GOVERNOR BROWN: ... The Secretary has made it very clear this ten percent reduction, but there is one thing, Mr. Secretary, that we would like very much to have in California.

"We would like to have you make a study of the conservation practices immediately so that in the future if it becomes necessary to cut down that it wouldn't be based upon an arbitrary order but would be based upon a factual situation.

"Would that be possible?

"SECRETARY UDALL: Governor, I think this is a very good point and I think that we should carry it out and I know Mr. West and his people [Bureau of Reclamation employees] are going to have to do a lot of work and they are going to have to have a lot of inquiry into a lot of practices and problems that are common in the Basins, and I think there is an element of arbitrariness in the approach that we have taken perhaps, but in terms of carrying something out our choices are limited at this time." (JA 46.) (Emphasis added.)



The Secretary does not deny and there is no dispute that his order making a 10 percent reduction to all water users in the Lower Basin, including the District, was made without the notice and hearing required by the cases or by Section 5 of the Administrative Procedure Act governing agency adjudications.

At the outset it is clear that the water rights held by the District and its landowners are a valuable property right. The water rights conveyed or recognized by the contracts under § 5 of the Boulder Canyon Project Act are clearly valuable property rights upon which the irrigated economy of the Appellant District is vitally dependent. <sup>17/</sup>

The law is quite clear that the Secretary may not deprive the holder of valuable property rights without notice and a hearing. The Supreme Court, speaking of the analogous situation of claimants under the Mining Law, has held them entitled to notice and an administrative hearing within the Department prior to cancellation of their claims, even though they had not acquired a title to the lands from the Government:

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<sup>17/</sup> Lynch v. United States, 292 U.S. 571, 579 (1934). In the case of Ickes v. Fox, 300 U.S. 82, 94-5 (1937), the Supreme Court held that under the Reclamation Act, the landowners in reclamation projects acquire "a vested right to the perpetual use of the waters as appurtenant to their lands." In Arizona v. California, 373 U.S. 546, 583-585 (1963), the Court cited Ickes v. Fox as affording judicial review of the express limitations set by Congress upon the Secretary in the Boulder Canyon Project Act, including:

...In the construction, operation, and management of the works, the Secretary is subject to the provisions of the reclamation law. ...

...The Secretary is directed to make water contracts for irrigation and domestic uses only for "permanent service." §5. ...

There is no need to have to determine whether the District's contract embraces a water right to Colorado River waters under Federal law or State law. Under either, it is clearly a valuable property right entitled to protection within the meaning of the Fifth Amendment.



"Of course, the land department has no power to strike down any claim arbitrarily, but so long as the legal title remains in the Government it does have power after proper notice and upon adequate hearing, to determine whether the claim is valid and, if it be found invalid to declare it null and void." [citation omitted.]. . . .

"Due process in such case implies notice and a hearing."  
Best v. Humboldt Placer Mining Co., 371 U.S. 334, 337-338  
(1963). 18/

Appellant's rights to the consumptive use of Colorado River waters previously recognized for many years by the Appellee and his predecessors are certainly of equal if not greater stature than unpatented mining claims.

A similar conclusion follows under Section 5 of the Administrative Procedure Act, 5 U.S.C. § 1004, and the Fifth Amendment to the Constitution. In Wong Yang Sung v. McGrath, 339 U.S. 33 (1950), the Supreme Court held that Section 5 of the APA was applicable in situations where the due process clause of the Fifth Amendment required a hearing:

... The constitutional requirement of procedural due process of law derives from the same source as Congress' power to legislate and, where applicable, permeates every valid enactment of that body. ... (339 U.S. at 49.)

The Department of Interior has recognized the validity of these principles in ruling that a hearing under the APA is required before the cancellation of an individual's location of an unpatented mining claim on the public domain under the Mining Laws. United States v. O'Leary, 63 I.D. 341 (1956). Furthermore,

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18/ Cited with approval in Arizona v. California, 373 U.S. 546, 585, fn. 86 (1963).

it has long been established that the Department cannot cancel a desert land entry without affording the entryman a hearing. See e. g. Johnnie E. Whitted, 61 I. D. 172, 173 (1953), and cases cited. By the same principles, the Secretary may not arbitrarily curtail Appellant's established consumptive water uses without notice and a hearing.

- B. The Appellee's order curtailing Appellant's consumptive uses to permit the impounding of water upstream at Glen Canyon Dam (Lake Powell) for power purposes exceeds his lawful authority.

In ordering the curtailment of water deliveries to Appellant District, the Secretary exceeded the limits of his lawful authority, in that the reason for the reduction was to facilitate the impounding of water at Glen Canyon Dam in order to provide for the generation of electric power. Such impounding of water for power generation to be accomplished in part by a curtailment of deliveries of water for irrigation and domestic purposes, directly contravenes express Congressional provisions as confirmed by the Supreme Court to the effect that the Colorado River water may not be used for power to the detriment of irrigation uses.

The Boulder Canyon Project Act, which controls the Appellee's activities in this case, provides that irrigation and domestic uses take precedence over power:

That the dam and reservoir provided for by section 617 of this title [Hoover Dam] shall be used: First, for river regulation, improvement and navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact; and third, for power. . . . (§6, 43 U.S.C. §617e.)

Sections 8(a), 13(b) and 13(c) of the Project Act (43 U.S.C. §§617(a), 617 1(b), 617 1(c) further expressly subject the Secretary in the management and operation of the project to the Colorado River Compact. The Colorado River Compact expressly provides in Article IV(b):

(b) ...water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes. (5A 73,76.)

These provisions were expressly referred to by the Supreme Court as among statutory limitations upon the Secretary's authority, which could be judicially enforced. Arizona v. California, 373 U.S. 546, 584-5 (1963). <sup>19/</sup>

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<sup>19/</sup> The Court said:

And, as the Master pointed out, Congress set up other standards and placed other significant limitations upon the Secretary's power to distribute the stored waters. It specifically set out in order the purposes for which the Secretary must use the dam and the reservoir:

"First, for river navigation, improvement of navigation, and flood control; second for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River Compact; and third, for power." §6.

The Act further requires the Secretary to make revenue provisions in his contracts adequate to ensure the recovery of the expenses of construction, operation, and maintenance of the dam and other works within 50 years after their construction. §4(b). The Secretary is directed to make water contracts for irrigation and domestic use only for "permanent service." §5. He and his permittees, licensees, and contractees are subject to the Colorado River Compact, §8(a), and therefore can do nothing to upset or encroach upon the Compact's allocation of Colorado River water between the Upper and Lower Basins. ...And, of course, all the powers granted by the Act are exercised by the Secretary and his well-established executive department, responsible to Congress and the President and subject to judicial review. [Footnote omitted.]

These provisions were incorporated by Congress in the Colorado River Storage Project Act, 43 U.S.C. § 620 f, authorizing construction and operation of Glen Canyon Dam as follows:

The hydroelectric powerplants and transmission lines authorized by this chapter to be constructed, operated, and maintained by the Secretary shall be operated in conjunction with other Federal powerplants, present and potential, so as to produce the greatest practicable amount of power and energy ... but in the exercise of the authority hereby granted he shall not affect or interfere with the operation of the provisions of the Colorado River Compact. ... the Boulder Canyon Project Act ... and any contract lawfully entered into under said Compacts and Acts. Subject to the provisions of the Colorado River Compact, neither the impounding nor the use of water for the generation of power and energy at the plants of the Colorado River storage project shall preclude or impair the appropriation of water for domestic or agricultural purposes pursuant to applicable State law. (Emphasis added.)

It is clear that the Secretary's order reducing deliveries to Lower Basin water users resulted from his decision to close the gates at the upstream Glen Canyon Dam (Lake Powell) to accumulate water there for the production of power. The sequence of events is set forth in the complaint as elucidated by various press releases issued by the Department incorporated therein (JA 24-42). <sup>20/</sup> Judge Jones in addition heard testimony and expressly so found in issuing the preliminary injunction:

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<sup>20/</sup> For example, the Appellee's official press release of May 11, 1964 (Exhibit F to Complaint, pp. 1, JA 31), makes it clear that his subsequent order of May 16 in Las Vegas reducing consumptive use deliveries to Lower Basin users came as a result of his decision, then made, to close the gates at Glen Canyon Dam to store water for power purposes.

This press release also shows that there was over 18,000,000 acre-feet in storage in the Colorado River reservoirs, which would supply the existing consumptive use water requirements in the Basin without curtailment for more than four years.

21. Due to the low water levels at Lake Powell and Lake Mead on May 11th, 1964, the defendant closed the gates at Glen Canyon Dam in order to bring Lake Powell to minimum operation level. On May 16, 1964, the defendant announced the 10 percent reduction to Lower Basin users in order to replenish the waters in Lake Mead. (JA 352.)

Since the Secretary's order imposing a "water storage" curtailment on Lower Basin users resulted from his decision of May 11, 1964 to close the gates of Glen Canyon to impound water for power purposes, the order is patently illegal as beyond the express limitations on his authority set by Congress.

- C. The Secretary's order violates Section 5 of the Boulder Canyon Project Act requiring the delivery of water for 'permanent service' under its contract.

As noted by the Supreme Court in Arizona v. California, 373 U.S. 546, 585 (1963), supra, note 19 p. 26, the mandate of Section 5 of the Boulder Canyon Project Act, 43 U.S.C. § 617d that "contracts respecting water for irrigation and domestic uses shall be for permanent service," presents a judicially enforceable limit to the authority of the Secretary. In the present case the Secretary's curtailment of deliveries to the Appellant which are reasonably required for the beneficial use for irrigation of lands within the District, constitutes a direct violation of the statutory mandate requiring permanent service.

The matter is of extreme importance to the District. Due to the nature of its irrigation distribution system, there is no wastage or unnecessary loss of water from the point of receipt from the Government to delivery to the farms, where the most modern and efficient irrigation practices are employed. Thus, the arbitrary curtailment by Appellee of waters previously received by the District results in inadequate water for the growing crops, the bulk of which are

citrus trees. The shortage of water required for such crops when needed can result in serious damage to the trees which would take a long time to repair.

(See JA 263-295; 47-72.)

- D. The Secretary's order instituting an equal pro rata reduction for consumptive users in the Lower Basin is contrary to the mandate of Section 4(a) of the Project Act establishing priorities between users in Arizona and California.

If, as the Secretary appears to assert, there is a shortage of water available for satisfaction of consumptive uses in the Lower Basin, then his order imposing an equal pro rata reduction upon all users therein violates the standards set by Congress in the Project Act for the allocation of available waters between users in California and Arizona. As held in Arizona v. California, 373 U.S. 546, 583 (1963);

...[The Secretary's power] is limited and channeled by standards in the Project Act. In particular, the Secretary is bound to observe the Act's limitation of 4,400,000 acre-feet on California's consumptive uses out of the first 7,500,000 acre-feet of mainstream water. This necessarily leaves the remaining 3,100,000 acre-feet for the use of Arizona and Nevada, since they are the only other States with access to the main Colorado River. Nevada consistently took the position, accepted by the other States throughout the debates, that her conceivable needs would not exceed 300,000 acre-feet, which, of course, left 2,800,000 acre-feet for Arizona's use.

The court's decree provides:

If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of 7,500,000 acre-feet in the aforesaid three states, then ... in no event shall more than 4,400,000 acre-feet be apportioned for use in California including all present perfected rights. (376 U.S. 340, 342 (1964).)

While the total present consumptive uses of mainstream waters in the Lower Basin are less than 7,500,000 acre-feet, present users in California exceed 4,900,000 acre-feet (JA 9). Thus, users in Arizona, of which the



Appellant is one, are nowhere near the 2,800,000 acre-feet allocated by the Act to that State, while California users are in excess of the 4,400,000 acre-feet limitation for California. Under these circumstances the Appellant's order instituting an equal ten percent reduction on all Lower Basin users to take care of an alleged shortage without regard to their State was illegal and should be declared void as beyond the limiting standards set by Congress in Section 4(a) of the Project Act.

E. The Secretary's order of May 16 is arbitrary in view of his failure to comply with the Mexican Water Treaty.

Under the Protocol to the Mexican Water Treaty and Memorandum of Understanding between the State and Interior Departments relative thereto, the Secretary is vested with responsibility for the delivery of the quantities of water guaranteed to Mexico under the Treaty (Executive A, 78th Cong. 2d Sess., Treaty Series 994 (59 Stat. 1219) (Treaty); S. Ex. H. 78th Cong. 2d Sess. (Protocol); H. Doc. 717, 80th Cong. 2d Sess. (1948), p. A889 (Memorandum of Understanding)).

Article 15E of the Treaty provides:

"In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-feet allotted to Mexico, the United States Section shall so inform the Mexican Section in order that the latter may schedule such surplus water to complete a quantity up to a maximum of 1,700,000 acre-feet. . . ."

Article 10(a) of the Treaty allocates to Mexico from the Colorado River a guaranteed annual quantity of 1,500,000 acre-feet and Article 10(b) provides:



"In the event of extraordinary drought . . . in the United States, thereby making it difficult for the United States to deliver the guaranteed quantity of 1,500,000 acre-feet . . . a year, the water allotted to Mexico under subparagraph (a) of this Article will be reduced in the same proportion as consumptive uses in the United States are reduced."

In spite of these limitations, the Appellee delivered 2,003,898 acre-feet to Mexico in 1963 and in the first four months of 1964 delivered 73,857 acre-feet more to Mexico than was ordered by Mexico. (JA 10.)

The Appellee's efforts to impose on water users within the United States the burden of his failure to comply with the duties imposed upon him by the Treaty must be rejected as contrary to law and equity.

#### CONCLUSION

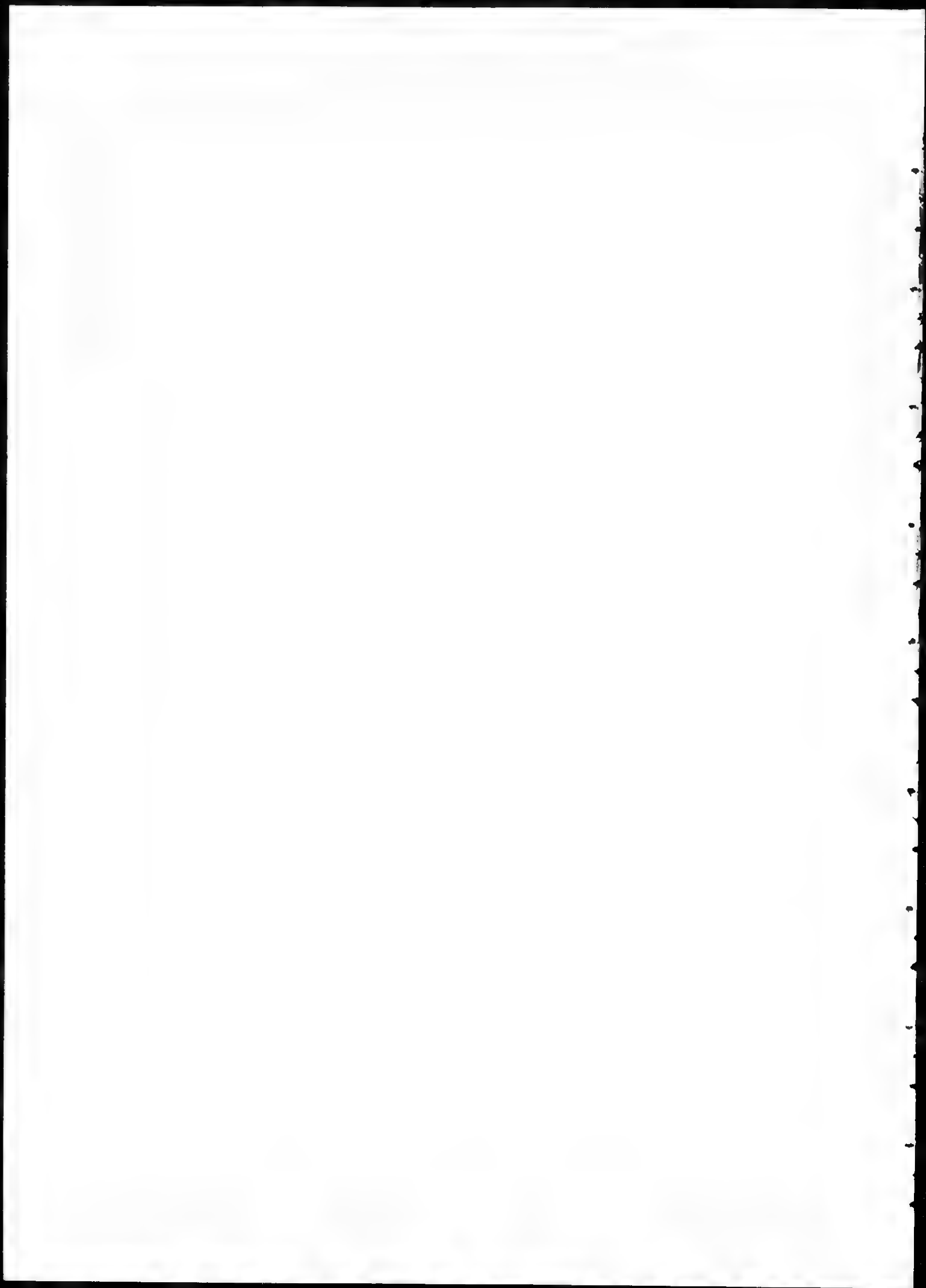
For these reasons, Appellant respectfully submits that the decision of the court below dismissing the complaint was erroneous and should be reversed.

Respectfully submitted,

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## APPENDIX A

### CONSTITUTIONAL AMENDMENT, STATUTES, AND TREATY PROVISIONS INVOLVED

1. U.S. Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment or a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. The Boulder Canyon Project Act of 1928 (43 U.S.C. § 617):

a. Section 4(a), 43 U.S.C. § 617(c) provides as follows:

(a) This subchapter shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this subchapter, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River Compact, mentioned in section 617 1 of this title, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from December 21, 1928, then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this subchapter, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the

Colorado River for use in the State of California, including all uses under contracts made under the provisions of this subchapter and all water necessary for the supply of any rights which existed on December 21, 1928, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess of surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

b. Section 5, 43 U.S.C. § 617d, provides as follows:

The Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses . . . upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this subchapter, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this subchapter and the payments to the United States under subsection (b) of section 617c of this title. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to subsection (a) of section 617c of this title. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.

\* \* \* \* \*

c. Section 6, 43 U.S.C. § 617e, provides as follows:

The dam and reservoir provided for by section 617 of this title shall be used: First, for river irrigation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power.

3. Article IV(b) of the Colorado River Compact, approved by the Boulder Canyon Project Act provides:

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural

and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

4. The Colorado River Storage Project Act of 1956, 43 U. S. C. § 620f, authorizing construction and operation of Glen Canyon Dam provides:

The hydroelectric powerplants and transmission lines authorized by this chapter to be constructed, operated, and maintained by the Secretary shall be operated in conjunction with other Federal powerplants, present and potential, so as to produce the greatest practicable amount of power and energy that can be sold at firm power and energy rates, but in the exercise of the authority hereby granted he shall not affect or interfere with the operation of the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act and any contract lawfully entered into under said Compacts and Acts. Subject to the provisions of the Colorado River Compact, neither the impounding nor the use of water for the generation of power and energy at the plants of the Colorado River storage project shall preclude or impair the appropriation of water for domestic or agricultural purposes pursuant to applicable State law.

5. Article 10(b) of the Treaty between the United States and Mexico allocating waters of the Colorado River to Mexico provides:

In the event of extraordinary drought or serious accident to the irrigation system in the United States, thereby making it difficult for the United States to deliver the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) a year, the water allotted to Mexico under subparagraph (a) of this Article will be reduced in the same proportion as consumptive uses in the United States are reduced.

REPLY BRIEF FOR APPELLANT

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20049

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YUMA MESA IRRIGATION AND DRAINAGE DISTRICT,

Appellant

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR,

Appellee

Appeal From An Order Of The United States District Court  
For The District of Columbia

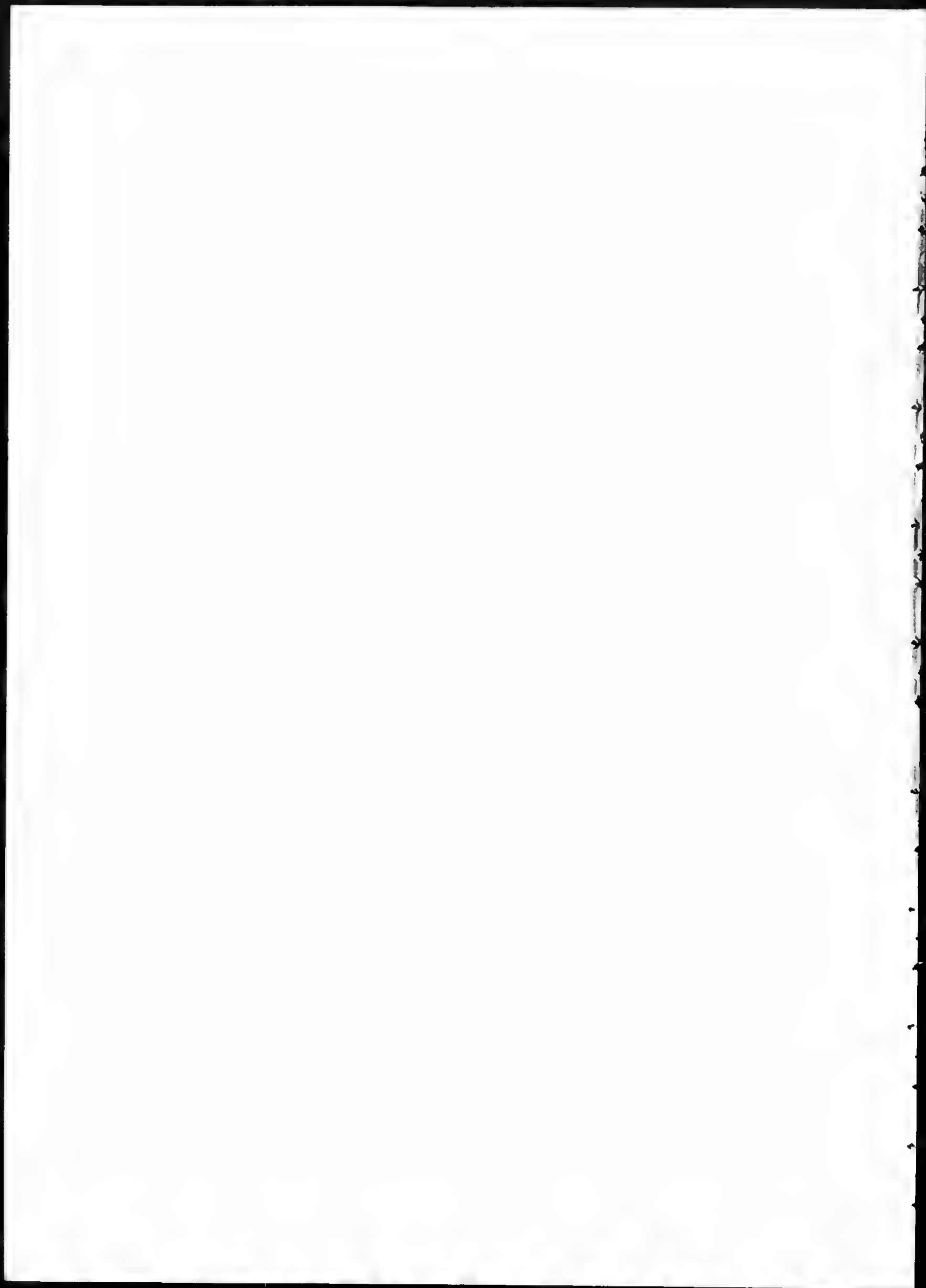
United States Court of Appeals  
for the District of Columbia Circuit

FILED JAN 16 1967

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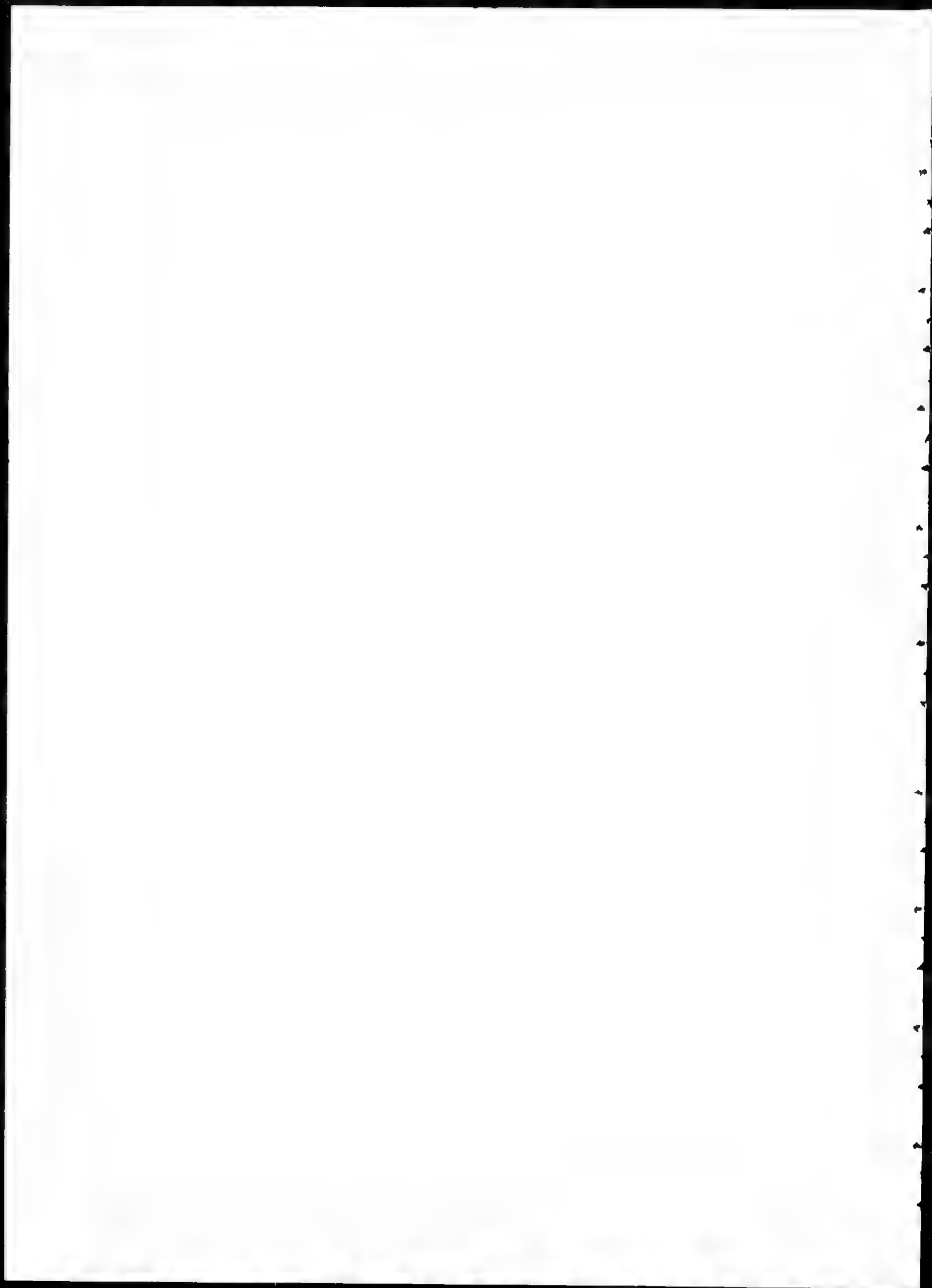
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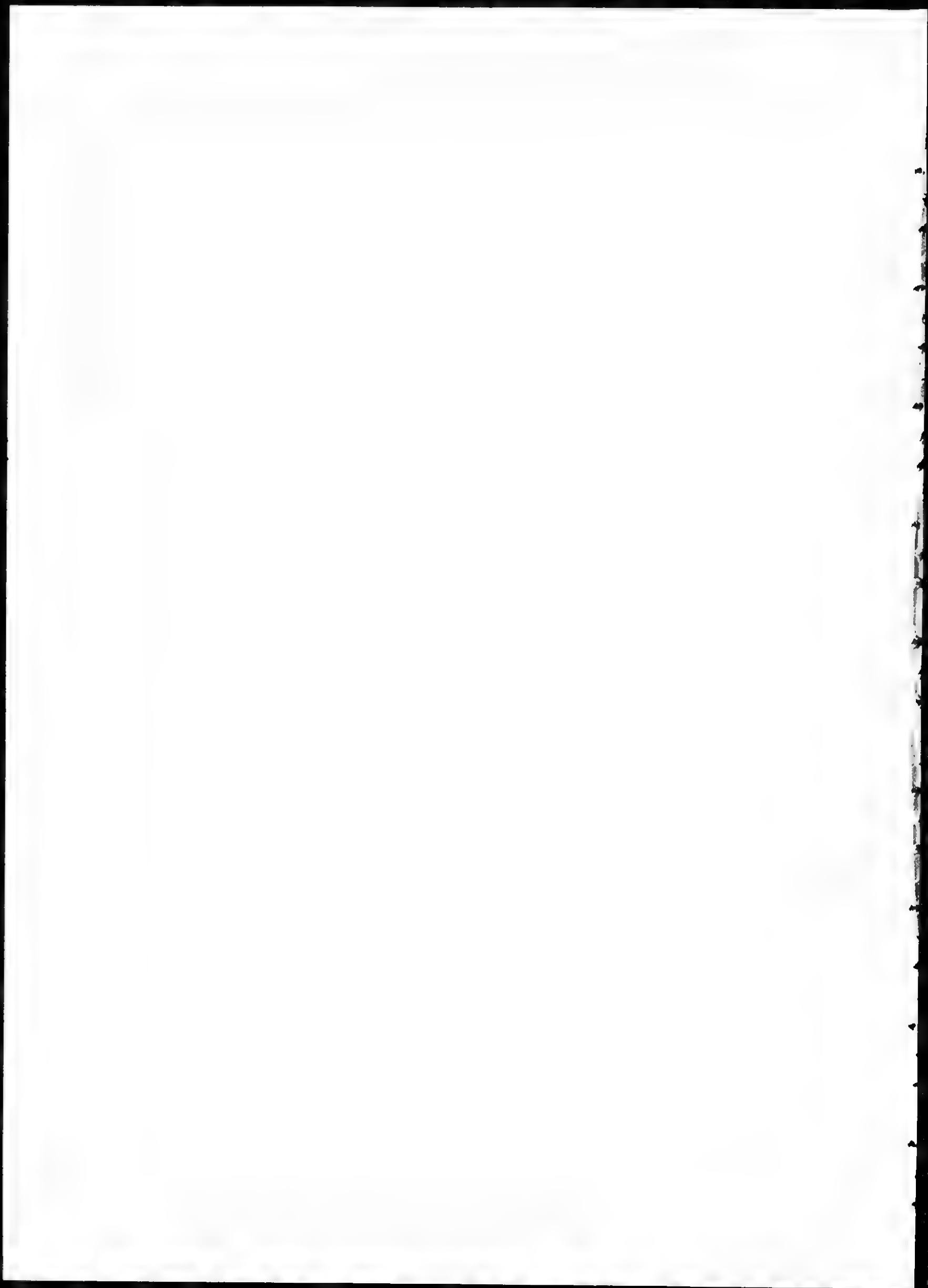
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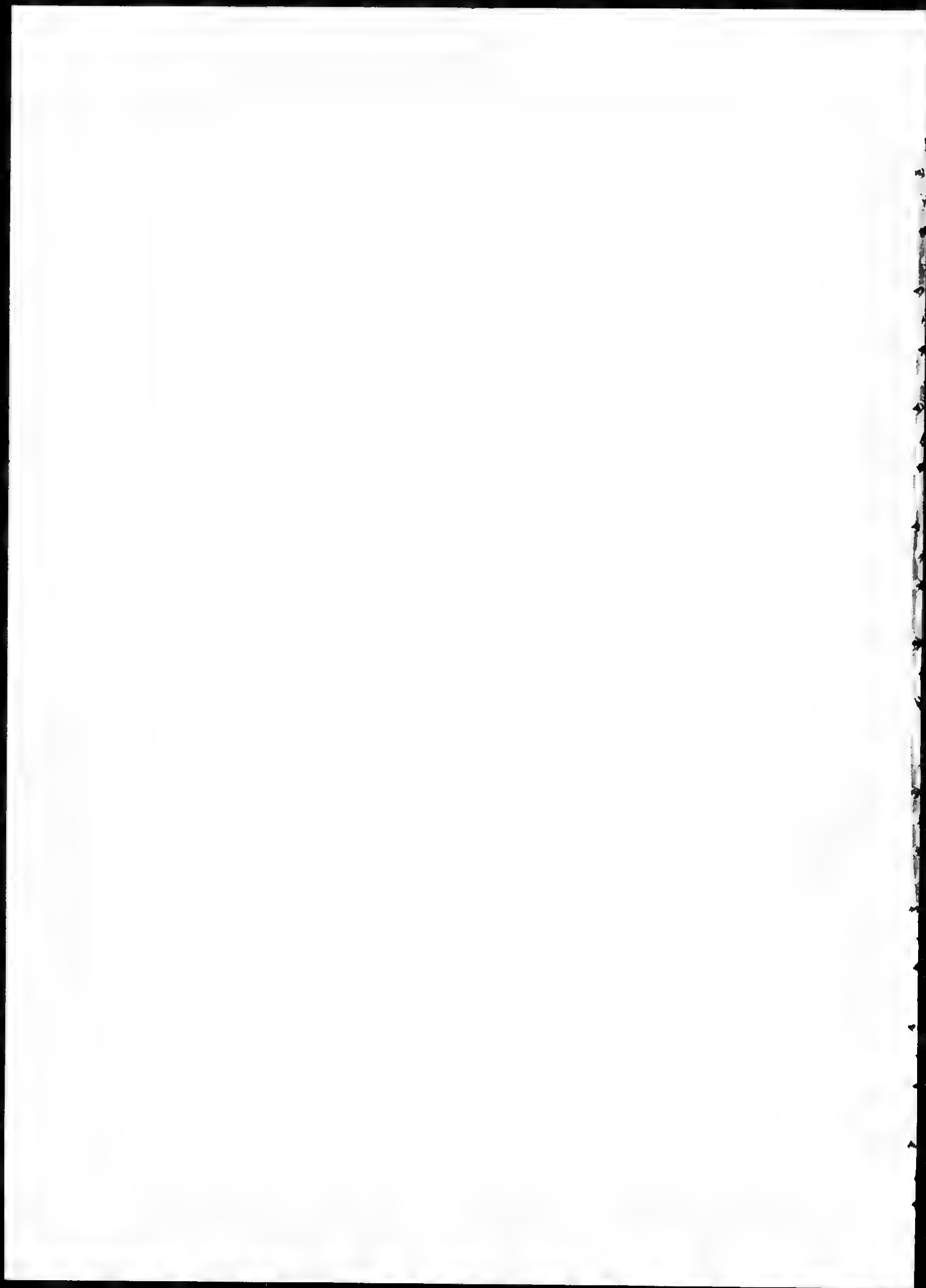
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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20049

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YUMA MESA IRRIGATION AND DRAINAGE DISTRICT,

Appellant

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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REPLY BRIEF FOR APPELLANT

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The brief for appellee in support of dismissal of the complaint on motion relies upon arguments which were rejected by Judge Jones in this case in granting a preliminary injunction (JA 347-353) and which, with but one exception, are inconsistent with the decision of Judge Corcoran (JA 403-408). The contentions made by the appellee are discussed hereafter in the sequence followed by appellee's brief.



I. THE COURT BELOW PROPERLY REJECTED THE APPELLEE'S CONTENTION THAT THE CASE WAS MOOT BECAUSE OF THE SECRETARY'S REFUSAL TO CONCEDE THAT HIS COURSE OF ACTION UNDERLYING THE CURTAILMENT ORDER TERMINATED ON DECEMBER 31, 1964.

At the hearing below before Judge Corcoran on November 5, 1965, the appellee argued, similar to his present argument (Br. 8-9), that the case was moot because the Secretary's order expired December 31, 1964 (JA 403). The District Court impliedly rejected this contention, otherwise it could not have adjudicated the merits of the action before it.<sup>1/</sup> Appellee's inconsistent position now that the judgment below on the merits (JA 403-409) was proper but that appellant's appeal alone should be dismissed as moot (Br. 9), is clearly contrary to the established procedures set forth by the Supreme Court for the federal judiciary in civil cases:

... The established practice of the Court in dealing with a civil case from a court in the federal system while on its way here or pending our decision which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss. That was said in *Duke Power Co. v. Greenwood County*, 299 U.S. 259, 267 ... to be "the duty of the appellate court." *United States v. Munsingwear*, 340 U.S. 36, 39-40 (1950) <sup>2/</sup>

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<sup>1/</sup> Moore's Federal Practice §57.13, p. 3072 states:

One or more of the issues involved in an action may become moot prior to ordering the trial of the action in the lower court. In this event the trial court should refuse to make an adjudication of the moot issue(s). ...

<sup>2/</sup> The case of *St. Pierre v. United States*, 319 U.S. 41, 42 (1943) cited by appellee (Br. 8-9) involves a criminal proceeding and was not discussed by the Supreme Court in its later *Munsingwear* decision involving the rule in civil cases. Moore criticizes the *St. Pierre* decision as "questionable," 6A Moore's Federal Practice, §57.13 at 3074 n. 9.

Thus, appellee's attempt to argue mootness as a bar to appellant's appeal but not to the judgment below on the merits is inherently contradictory.

The District Court below properly declined to rule the proceeding moot in the face of the appellee's refusal to concede that the underlying controversy had ended on December 31, 1964, with the alleged expiration of the terms of the Secretary's order in question. The test of mootness has been set forth by this court in a closely analogous situation in Fox v. Ickes, 78 U.S. App. D.C. 84, 137 F.2d 30, 32, cert. denied, 320 U.S. 792 (1943). There, an order of the Secretary of Interior reducing the amount of water delivered to certain irrigated lands was formally withdrawn by the Secretary after it had been challenged by the farmers in District Court. This court rejected the Secretary's contention that this mooted the controversy:

Appellants seek to enjoin the Secretary from carrying out his intention as expressed in his notice of October, 1930, and his subsequent actions. During the proceedings the Secretary revoked the notice and moved that the actions be dismissed on the ground the cases had become moot. However, it is clear from the record that the Secretary still intends to impose a charge upon available water to be furnished on appellants' lands and, therefore, the revocation of the notice itself (which is simply evidence of his intention) does not remove the substance of appellants' causes of action.

A key issue in the controversy between the appellant District and the Secretary is whether the deliveries of water involved were necessary and essential to sustain the Districts' agricultural economy or were unnecessary and wasteful as alleged by the Secretary. At the hearing before Judge Corcoran counsel for the appellee refused to concede either that the District was not wasting water or that the Secretary was not still proceeding with a similar type

program against the District as that embodied in his original May 16, 1964, 10 percent curtailment order. (See Appellant's Opening Br. pp. 11-12, fn.12.) The District, having existed under a continuing threat since May, 1964, that its traditional water supply will be curtailed by the Secretary, is entitled to a resolution of the issues set forth in the complaint.

II. THE SECRETARY'S CONTENTIONS THAT THE DISTRICT COURT PROPERLY DISMISSED THE DISTRICTS' COMPLAINT ON MOTION GO FAR BEYOND THAT RELIED UPON BY THE COURT BELOW AND ARE CONTRARY TO THE STATUTORY AND CONSTITUTIONAL RESTRICTIONS ON THE SECRETARY'S AUTHORITY ALLEGED IN THE COMPLAINT.

The appellee cites four separate arguments for his contention that the complaint was properly dismissed on motion as "an unconsented suit against the United States" (Br. II A, B, C, D, 9-36). Of these, only one, (II A, pp. 11-17), was clearly adopted by the court below. None of the four present any valid ground for dismissal of the District's complaint.

The appellee now concedes that a suit against the Secretary may be maintained where he acts beyond his statutory or constitutional powers (Br. 10-11). This test is confirmed by the leading case in this circuit involving the indispensability of the United States to a suit against the Secretary of Interior, West Coast Exploration Co. v. McKay, 93 U.S. App. D.C. 307, 213 F.2d 582, cert. denied, 347 U.S. 989 (1954), which thoroughly reviewed the Larson case. And in Ickes v. Fox, 300 U.S. 82 (1937), the Supreme Court affirmed the jurisdiction of the District Court of the District of Columbia to enjoin the Secretary of Interior from enforcing an order, similar to the one involved in the present case, wrongfully depriving irrigation users of water:

The suits do not seek specific performance of any contract. They are brought to enjoin the Secretary of the Interior from enforcing an order, the wrongful effect of which will be to deprive respondents of vested property rights not only acquired under Congressional acts, state laws and government contracts, but settled and determined by his predecessors in office. That such suits may be maintained without the presence of the United States has been established by many decisions of this Court. ... (300 U.S. 96-97.)

Ickes v. Fox was recently cited by the Supreme Court to support its statement that the Secretary of Interior is subject to judicial review for any failure to comply with the statutory mandates of the Boulder Canyon Project Act.

Arizona v. California, 373 U.S. 546, 584, n.86 (1963).

- A. The curtailment ordered by the Secretary would in fact deprive the appellant of valuable property rights.

The appellee's concession that the water delivery contract held by the District grants it a "right" to Colorado River waters (Br. 14) renders unnecessary any determination as to whether the District's right rests on federal or state law, or both.<sup>3/</sup> It is sufficient for the purpose here that the appellant has

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<sup>3/</sup> While Arizona v. California, 373 U.S. 546 (1963) held that the Secretary in entering contracts for the delivery of Colorado River waters under §5 of the Boulder Canyon Project Act is not required to follow priorities laid down by conflicting State law, the court did not reverse existing federal law that the waters so delivered become "appurtenant to the land" and vested under consistent State laws as required by the Reclamation Act. (See 43 U.S.C. §372; 373 U.S. 584, 586.)

The dictum in United States v. Chandler-Dunbar Co., 229 U.S. 53, 69 (1913) cited by appellee (Br. 12) has never been applied by the Supreme Court to bar acquisition of property rights to the use of waters of western navigable streams for irrigation purposes. A similar contention by the Government was rejected by the Court in United States v. Gerlach Live Stock Co., 339 U.S. 725, 737, (1950) where the Court said it had never held that the "Government could destroy the flow of a navigable stream and carry away its waters for sale to private interests without compensation to those deprived of them."

a valuable property right to the use of Colorado River waters which it seeks to protect from illegal curtailment by the appellee.

Under §5 of the Boulder Canyon Project Act the Secretary is under a mandatory duty to make only deliveries for permanent service:

... Contracts respecting water for irrigation and domestic uses shall be for permanent service. ...  
(43 U.S.C. §617d.)

This was one of the express provisions of the Project Act which the Supreme Court in Arizona v. California, 373 U.S. 546, 583-585 (1963) described as a judicially enforceable limitation upon the Secretary's authority.

The Secretary's curtailment order of May 16, 1964, announced at a press conference in Las Vegas (JA 86), admittedly without any completed study of irrigation practices, notice or hearing (JA 46, Answer, par. 10 JA 356; see JA 349), reduced the deliveries of water to the District from the quantities received by it in previous years. The District's complaint alleged that the curtailment would jeopardize the crops in the District (JA 4-6). After the District filed a motion for preliminary injunction, the Regional Director of the Bureau of Reclamation sent the letter of July 16, 1964 (Appellee Br. 15), upon which the Secretary relied in his answer to the motion (JA 90, 197). This letter posed an issue of fact - namely whether it was possible for the Secretary while curtailing deliveries to prevent hardship to any individual farmer. This question of fact, together with the Secretary's contention that the District was somehow wasting water, were litigated before Judge Jones on the motion for preliminary injunction. After receiving affidavits and hearing testimony, Judge Jones found that an irrigation impairment could not be prevented as

alleged in the Bureau's July 16, 1964 letter (Findings, Nos. 13-17, JA 350-351) and that the Government had made no showing that the District had been wasting water (JA 344-345).

Subsequently, the appellee on October 9, 1964, in answer to the complaint, pleaded the July 16, 1964 letter so that this issue of fact was then joined on the pleadings (JA 356, 359).

The appellee's argument now that the court below could properly dismiss the complaint on motion because of the July 16, 1964 letter and because the District "wasted" water (Br. 16), would resolve the very factual issue posed by the pleadings.<sup>4/</sup> Clearly, it was improper to decide such factual issues in the Secretary's favor contrary to the allegations of the complaint on a motion to dismiss. Cf. Fox v. Ickes, 78 U.S. App. D.C. 84, 137 F.2d 30, 34-35, cert. denied, 320 U.S. 792 (1943).

B. The Secretary's order exceeded his statutory authority.

The appellee's reliance on the language of Arizona v. California, 373 U.S. 546, 589-590 (Br. 18-19) as an unlimited grant of power over the Colorado River is inaccurate. The Supreme Court in that case set out specific statutory limits placed on the Secretary:

The argument that Congress would not have delegated to the Secretary so much power to apportion and distribute the water overlooks the ways in which his power is limited and channeled by standards in the Project Act. In

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<sup>4/</sup> Other contested factual issues which the appellee also argues can be resolved contrary to the District on a motion to dismiss are discussed infra, pp. 9-10, 12.



particular, the Secretary is bound to observe the Act's limitation of 4,400,000 acre-feet on California's consumptive uses out of the first 7,500,000 acre-feet of mainstream water. This necessarily leaves the remaining 3,100,000 acre-feet for the use of Arizona and Nevada, since they are the only other States with access to the main Colorado River. Nevada consistently took the position, accepted by the other States throughout the debates, that her conceivable needs would not exceed 300,000 acre-feet, which, of course, left 2,800,000 acre-feet for Arizona's use. ...

And, as the Master pointed out, Congress set up other standards and placed other significant limitations upon the Secretary's power to distribute the stored waters. It specifically set out in order the purposes for which the Secretary must use the dam and the reservoir:

"First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power." §6.

... The Secretary is directed to make water contracts for irrigation and domestic uses only for "permanent service." §5. He and his permittees, licensees, and contractees are subject to the Colorado River Compact, §8(a). ... In the construction, operation, and management of the works, the Secretary is subject to the provisions of the reclamation law, except as the Act otherwise provides. §14. ...

And, of course, all of the powers granted by the Act are exercised by the Secretary and his well-established executive department, responsible to Congress and the President and subject to judicial review.<sup>86</sup> 5/ (373 U.S. at 583-585.)

The Secretary's refusal to abide by these statutory limitations on his authority is the subject of the complaint.

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5/ In footnote 86 the court cited the following:

86. See, e.g., *Ickes v. Fox*, 300 US 82, 81 L ed 525, 57 S Ct 412 (1937); cf. *Best v. Humboldt Placer Mining Co.*, 371 U.S. 4, 9 L ed 2d 350, 83 S Ct 379 (1963); *Boesche v. Udall*, 373 U.S. 472, 10 L ed 2d 491, 83 S Ct 373 (May 27, 1963).



1. The limitation against curtailing irrigation uses for power.

The appellee contends, despite the allegation of the complaint (JA 6-9) and the finding of fact by Judge Jones after the preliminary injunction hearing (Finding 21, JA 352), that the curtailment order of irrigation uses was in fact not for the illegal purpose of producing electric power. Not only is this position defective because it seeks to resolve a disputed issue of fact on a motion to dismiss, but the argument is clearly fallacious.

The Glen Canyon Dam (Lake Powell) completed prior to the Spring of 1964, is upstream of Hoover Dam (Lake Mead) as shown on the map at JA 38. In March of 1964, the Secretary ordered the outlet gates at Glen Canyon opened on "March 26 sufficiently to release water stored in Lake Powell at a rate that will maintain storage in Lake Mead ... at a minimum of 14.5 million acre-feet. ... The minimum water level that must be maintained in Lake Mead to enable Hoover's generators to produce their rated capacity of 1,340,000 kilowatts is 1,123 feet above mean sea level, or 14.5 million acre feet of storage." (Ex. D to complaint, JA 24.) On May 11, 1964, the Secretary reversed this position and ordered the gates at Glen Canyon Dam shut to attempt "to bring Lake Powell to minimum power operating level" and ordered a replacement of the power that would be lost to the power users at the downstream Hoover Dam because of the resultant drop in the operating level of Lake Mead below 1,123 feet. (Ex. F to complaint, JA 31-38.) The purchase of replacement power for that lost at Hoover Dam because of the attempt to fill Lake Powell upstream was announced by the

Secretary on May 16, 1964:

Replacement power and energy are necessary because of the loss of output at the Hoover Dam power plant as the level of Lake Mead drops below rated power head while the spring runoff from the Colorado River is held back in Lake Powell to bring the level of that new reservoir behind Glen Canyon Dam up to the minimum operating head for the Glen Canyon plant. The decision to resume storage of water in Lake Powell was announced May 11 by the Secretary of the Interior Stewart L. Udall. " (Ex. G to complaint, JA 39-40.)

As of May 7, 1964, the Secretary admittedly had over 18,000,000 acre-feet of water in storage (JA 37), more than adequate to supply the irrigation and municipal consumptive use requirements for some years to come.<sup>6/</sup> The clear reason for the curtailment of consumptive uses in the Lower Basin was to reduce the anticipated draft on Lake Mead below the rated power head level of 1,123 feet and thus reduce the amount of replacement power required to be purchased by the Secretary, while at the same time seeking to avoid drawing Hoover below its minimum power operation level of 1,083 feet whereupon the gates at Glen Canyon would have to be reopened. The appellee's contention that his curtailment order of May 16 had no relationship to the storage of water for power purposes is patently inconsistent with the facts.<sup>7/</sup>

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<sup>6/</sup> The estimate of four years contained in paragraph 11, complaint (JA 7) assumed some inflow into Lake Mead under adverse water conditions. As stated in paragraph 12, annual uses of Colorado River water in California were approximately 5,000,000 acre-feet per year, while the total for all three lower basin States (California, Arizona and Nevada) was less than 7,500,000 acre-feet (actually around 6,000,000 acre-feet per annum).

<sup>7/</sup> Furthermore, the Department's pronouncements clearly linked the two (JA 30, 33-34), and the fact was in effect conceded by the Government at the trial before Judge Jones, JA 237-238, 241-243, 315.

2. Failure to follow allocations set forth by the Project Act.

The appellee seeks to avoid the mandate of the Project Act as construed in Arizona v. California regarding the allocations among users in the lower basin by saying that Article II (B)(3) of the Court's decree is not applicable unless the Secretary so decides (Br. 25). But the decree does not give the Secretary any choice as to whether he will comply or not. It states that "if insufficient mainstream water is available for release ... to satisfy annual consumptive use of 7,500,000 acre-feet" in the three lower basin States, "in no event shall more than 4,400,000 acre-feet be apportioned for use in California." 376 U.S. 342. The decree speaks in objective facts and nowhere gives the Secretary any discretion not to comply with it once those objective facts exist. Since in fact there was insufficient mainstream water available to satisfy consumptive uses of 7,500,000 acre-feet in the lower basin States, the Secretary cannot allocate more than 4,400,000 acre-feet to users in California by curtailing users in Arizona when that State is nowhere close to its 2,800,000 acre-foot entitlement. See also 373 U.S. 583. Article II(B)(6) of the decree only permits users in California to use waters apportioned to Arizona, but not used in that State and certainly gives the Secretary no authority to curtail the existing consumptive uses in Arizona while permitting uses in California to exceed the 4,400,000 limit.

The gratuitous assertion of the Secretary that he curtailed the District merely to prevent the wastage of water in Arizona (Br. 27) is clearly an improper argument in view of the allegations of the District's complaint, confirmed at the hearing before Judge Jones, that the District

is not wasting water (JA 5-6, 344-345).

3. Limitation in Mexican Water Treaty.

Similarly, the Secretary while reducing consumptive uses of the District because of an alleged water shortage cannot avoid the mandate of Article 10(a) of the Mexican Water Treaty requiring reduction in deliveries to Mexico. Not only did the Secretary arbitrarily refuse to follow this provision of the Treaty designed to protect users in the United States, but in fact delivered substantially more water to Mexico than it ordered.

The appellee's assertion that the overdeliveries to Mexico resulted from the failure of the District and other users in the United States to take water ordered by them assumes the resolution of a disputed question of fact posed by the pleadings (JA 357), which cannot properly be resolved on a motion to dismiss.

C. The Secretary lacks statutory authority to abrogate deliveries of water to Lower Basin users.

The Secretary's contention that he may abrogate at will the water delivery contracts in the Lower Colorado River Basin (Br. 30-32) is not only astounding but clearly erroneous. Congress in §5 of the Boulder Canyon Project Act directed that the water contracts for irrigation and domestic uses "shall be for permanent service," a provision which the Supreme Court has termed a significant limitation upon the Secretary's authority. Arizona v. California, 373 U.S. 546, 584 (1963).

7a/

The Larson case clearly recognizes that a government official may be enjoined from exceeding his statutory authority. Similarly, the analogous

7a/ Larson v. Domestic and Foreign Corp., 337 U.S. 682 (1949).

case of Ickes v. Fox, 300 U.S. 82 (1937) which was cited with approval in Larson (337 U.S. at 691, n.12)<sup>8/</sup> and Arizona v. California (373 U.S. at 585, n.86), permits an injunction against the Secretary from enforcing an order curtailing established deliveries of water to irrigation users under the Reclamation Act which provides that "beneficial use shall be the basis, the measure and the limit of the right" (43 U.S.C. §372; emphasis added).

1. Section 5 of the Administrative Procedure Act applies.

The appellee contends that the Administrative Procedure Act does not apply because the Secretary's order was not an adjudication but was rulemaking whereunder matters relating to contracts are excepted (See 5 U.S.C. §553(a)(2)).

However, on its face, the Secretary's order is patently not rulemaking. Certainly the Secretary cannot issue a rule declaring that the appellant District is wasting 10 percent of its water delivery. Such a determination can only be made by a detailed determination of the facts under an adjudication:

[I]t has been held that an administrative agency having power to determine rights in particular cases may not lay down a general regulation which pre-determines cases within the regulation in disregard of particular circumstances; that the exercise of discretion in a determinative power requires an actual exercise of judgment and precludes adoption of a fixed policy which ignores meaningful differences in cases; and that power to make rules and regulations

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<sup>8/</sup> The analysis by the Court in Larson in footnote 26 of Ickes v. Fox (337 U.S. at 70) concerns the question of an allegation of tortious conduct by government officials, an issue not involved in the present case.

does not authorize a general regulation converting what under the statute is a question of fact to be decided from case to case into a conclusive presumption. An administrative agency may not, even though exempted from the strict legal rules of evidence, act arbitrarily and substitute a conclusive presumption for a fact. Thus, a flat rule denying benefit or relief to a particular class of applicants has been held unauthorized. (2 Am. Jr. 2d, Admin. Law, §299, p. 126.)

In Miller v. United States, 294 U.S. 435, 440 (1935), the Supreme Court struck down a regulation issued by the Veterans Administration which declared that the loss of a hand and one eye "shall be deemed to be total permanent disability under yearly renewable insurance," on the ground that this was a question of fact under the statute:

The vice of the regulation, therefore, is that it assumes to convert what in the view of the statute is a question of fact requiring proof into a conclusive presumption which dispenses with proof and precludes dispute. This is beyond administrative power. The only authority conferred, or which could be conferred, by the statute is to make regulations to carry out the purposes of the act - not to amend it.

By the same token, the Secretary lacks authority to issue a general rule declaring that the District and all of the other water using agencies in the Lower Basin are making an equal ten percent unreasonable use of water.

D. The relief sought does not require affirmative action by the sovereign.

The argument that the cause must fail because the relief requested would require affirmative action by the sovereign requires little discussion. It is based on a footnote in the Larson case which this court has ruled does



not modify the basic holding of the case. West Coast Exploration Co. v. McKay, 93 U.S. App. 307, 213 F.2d 582, 596, cert. denied, 347 U.S. 989 (1954) overruling Seiden v. Larson, 88 U.S. App. D.C. 258, 188 F.2d 661, (1951). Therefore, it is a restatement of the sovereign immunity argument clouded with semantics, as indicated by the reliance on the Becker<sup>9/</sup> and Robbins<sup>10/</sup> cases. These cases are easily distinguished. Becker was an attempt to enjoin a Bureau of Reclamation official from reducing the water level in a reservoir to a point that it would destroy fish there and create a health menace to a nearby city. The court properly held that the water delivery contracts and the Mexican Water Treaty required these water releases. There was no allegation that the official acted beyond his statutory or constitutional authority and no basis for such an argument. On those facts, the court correctly held that the action would not lie. The Robbins case was an attempt to enjoin Bureau officials from cutting off water deliveries to an irrigation district, but there the similarity between that case and this one ends. The water delivery contract there, as well as the statute authorizing the contract,<sup>11/</sup> expressly granted a priority to users other than the plaintiff and the Bureau officials were preserving that right. In the

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<sup>9/</sup> New Mexico v. Becker, 199 F.2d 426 (10th Cir. 1952).

<sup>10/</sup> Hudspeth County Conservation and Reclamation District v. Robbins, 213 F.2d 425 (5th Cir. 1954).

<sup>11/</sup> Warren Act, 36 Stat. 925 (1911), 43 U.S.C. §523.



present case the appellant seeks to enjoin the enforcement of an order which violates both the terms of a water delivery contract and a Federal statute. <sup>12/</sup> Becker and Robbins offer no impediment to that relief.

The question, therefore, is whether the Secretary's curtailment order was beyond his statutory or constitutional authority. If it was, enforcement of the policy it evidenced may be enjoined. That this may compel the Secretary to do something contrary to his wishes is beside the point. This court has frequently approved actions against officers of the Federal Government which require some form of affirmative action on their part. Some of these cases are cited in the margin. <sup>13/</sup> They make it clear that if a Federal official acts beyond his authority, suit will lie against him, regardless of whether or not it seeks some affirmative action on his part. A court does not require affirmative action by the sovereign when it orders an officer to comply with the law.

### III. THE SUPREME COURT DOES NOT HAVE EXCLUSIVE JURISDICTION.

The District Court, on deciding this case on its merits, was obviously of the opinion that exclusive jurisdiction was not in the Supreme Court. On this point it was eminently correct, as the following discussion demonstrates.

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<sup>12/</sup> See Ickes v. Fox, 300 U.S. 84, 96-97 (1937).

<sup>13/</sup> See e.g., West Coast Exploration Co. v. McKay, 93 U.S. App. D.C. 307, 213 F.2d 582, cert. denied, 347 U.S. 989 (1954); Clackamas County, Oregon v. McKay, 94 U.S. App. D.C. 108, 219 F.2d 479 (1954) vacated as moot 349 U.S. 909 (1955); McKay v. Wahlenmaier, 96 U.S. App. D.C. 313, 226 F.2d 35 (1955); Barash v. Seaton, 103 U.S. App. D.C. 159, 256 F.2d 714 (1958).

As the opinion makes clear, the subject matter of Arizona v. California<sup>14/</sup> was how much water from the Colorado each State had a right to receive. The case was an action between States under Article 3, Section 2 of the Constitution vesting original jurisdiction in the Supreme Court. In reaching its decision on this question the Court construed the Boulder Canyon Project Act and discussed the powers of the Secretary under it. Nothing in the opinion, however, and nothing in the Decree<sup>15/</sup> can be read as an assumption of exclusive jurisdiction over every controversy that might subsequently arise involving the Boulder Canyon Project Act, the contracts entered into under it, or the rights granted to water users by them. To the contrary, the Court expressly stated that the powers granted the Secretary by the Act were subject to judicial review.<sup>16/</sup> Significantly, the Court supported this statement with three cases, decided under its appellate jurisdiction, which had originated in the District Court.<sup>17/</sup> It is clear, therefore, that the Court did not construe the Boulder Canyon Project Act as making the Secretary the absolute monarch over the Colorado River, nor did it intend to make itself the exclusive forum for judicial review of the Secretarial action in connection with the river.

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<sup>14/</sup> 373 U.S. 546 (1963).

<sup>15/</sup> Arizona v. California, 376 U.S. 340 (1964).

<sup>16/</sup> 373 U.S. at 584-585.

<sup>17/</sup> The Court cited Ickes v. Fox, 300 U.S. 82 (1937); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); and Boesche v. Udall, 373 U.S. 472 (1963).

Furthermore, the subject matter of this action is entirely different from the one before the court in Arizona v. California. This action does not involve the rights of any Basin State to water, but the right of an Arizona Irrigation District to receive water from that State's allocation. The case does involve the Colorado River, the Boulder Canyon Project Act, and the Secretary of the Interior, but the similarity ends there. The issues, the relief sought and the parties are entirely different.

The fact that paragraph IX of the Decree in Arizona v. California reserved jurisdiction over that suit clearly does not mean that only the Supreme Court has jurisdiction over this one. By its terms, that paragraph applies only to "the subject matter of the controversy" and allows only parties to apply for relief. Appellant was not a party to that suit, and, as we have seen, this is a different controversy.<sup>18/</sup> The District is not suing upon the Supreme Court's decree nor seeking its modification; rather it bases its complaint upon the mandatory requirements of the Boulder Canyon Project Act.

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<sup>18/</sup> The contention that from 1964 forward only the Supreme Court - upon application of a party to Arizona v. California - can interpret the Boulder Canyon Project Act or the opinion or decree is patently frivolous. This court obviously cannot modify the decree, but it is clearly competent to determine its meaning. If it does so erroneously that error can be corrected - and uniformity of application obtained - by the Supreme Court upon petition for certiorari. This inconvenience upon the Secretary is by far more rational and less susceptible of mischief than a rule which would free him of all judicial restraints upon arbitrary and illegal action except by application by one of the parties to Arizona v. California in the Supreme Court.

The government's reliance upon the rule of priority of jurisdiction is equally wide of the mark. That doctrine is applicable only when there is substantial identity in the interests represented, in the rights reserved, and in the purposes sought.<sup>19/</sup> This is not such an instance.

The reliance on Section 14 of the Colorado River Storage Project Act is also misplaced. That Act granted consent to suits against the United States by a State. As such, it created an additional method by which a State could sue the United States on the statutes, agreements, and treaty constituting the law of the River. There is nothing to indicate that Congress intended to destroy the traditional jurisdiction of the inferior Federal courts to entertain actions against the Secretary for illegal acts. Certainly the Secretary did not think so when the bill was pending. In a letter dated March 9, 1955, an Assistant Secretary of the Interior so advised the House Interior and Insular Affairs Committee:

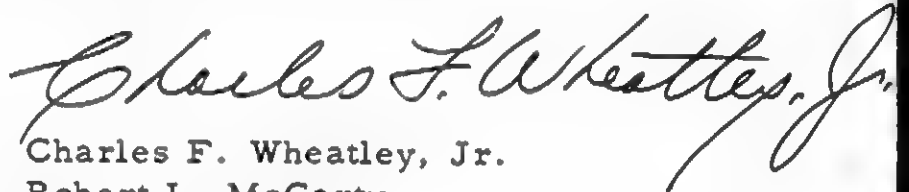
"... Unless extraordinary circumstances so require, it would seem unwise to single out the Colorado River for special treatment with respect to litigation. Moreover, assuming that the Secretary will be directed (as all of the bills provide in various places) to comply with the Colorado River compact and related documents, there is no apparent reason for the waiver of immunity of the United States from suit in the Supreme Court. There is ample [authority] in the other parts of the bills, we believe, on which to found an action against the Secretary alone in case he exceeds the authority given him under their terms. But if it is the desire of the committee to include such a provision ... we will not object." (1956 U.S. Code Cong. and Admin. News 2368; emphasis added.)

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<sup>19/</sup> See *Pacific Live Stock Co. v. Lewis*, 241 U.S. 440, 447 (1916).

This action is not predicated upon Section 14, and, as we have shown, it is not a suit against the United States which requires its consent. Section 14 is, therefore, irrelevant to the jurisdictional issue.

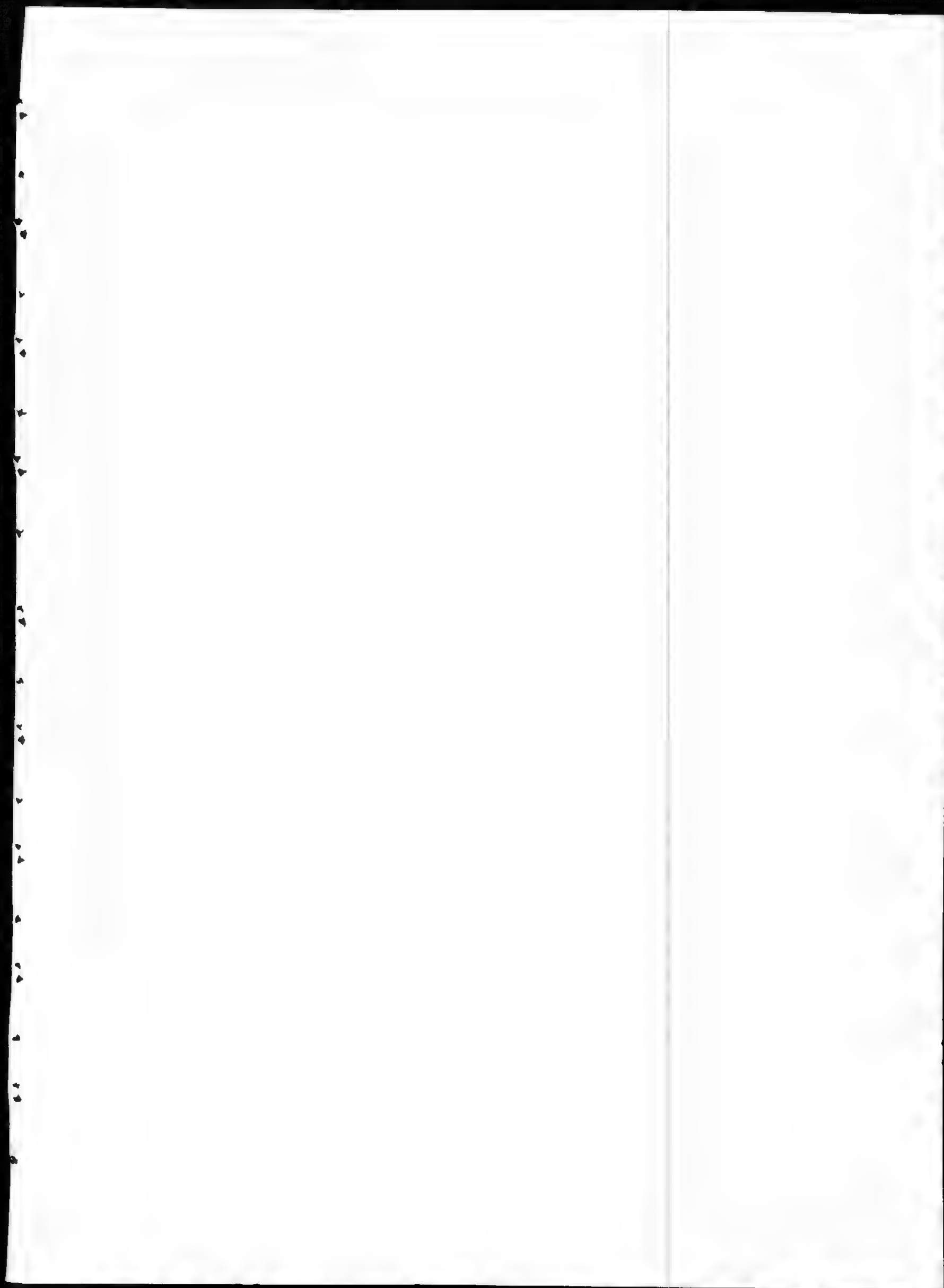
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BRIEF FOR APPELLEE

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20049

YUMA MESA IRRIGATION AND DRAINAGE DISTRICT,

APPELLANT

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR,

APPELLEE

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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United States Court of Appeals  
for the District of Columbia Circuit

FILED JAN 5 1967

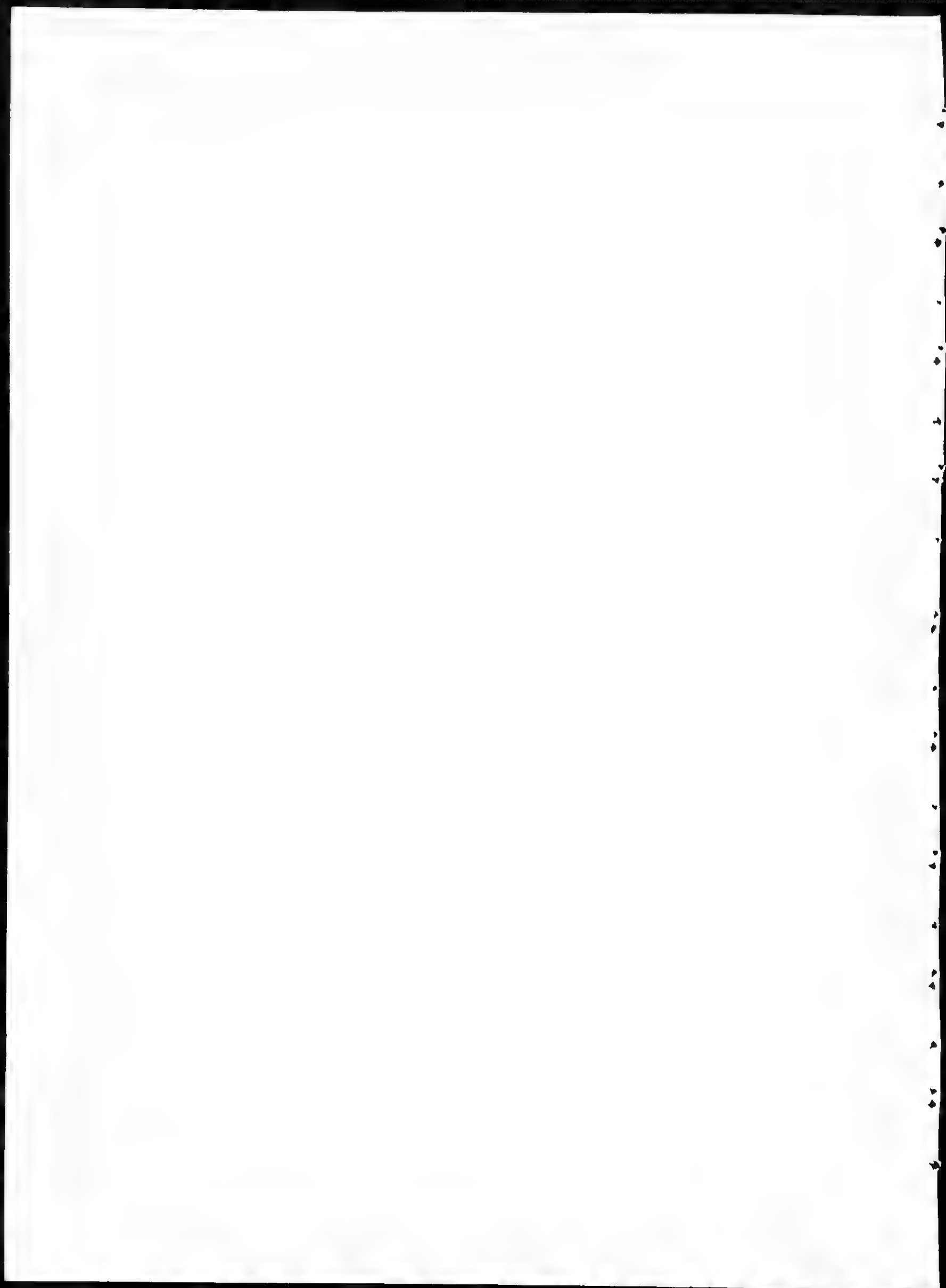
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### QUESTIONS PRESENTED

1. Whether an action involving the validity of an order of the Secretary of the Interior which by its own terms expired at midnight on December 31, 1964, is now moot.

2. Whether the district court had jurisdiction of an action to enjoin the Secretary of the Interior from reducing the amount of water which the appellants could divert from the Colorado River.

3. Whether any court other than the Supreme Court of the United States has jurisdiction to confirm or deny asserted rights to water in the main stream of the Colorado River.

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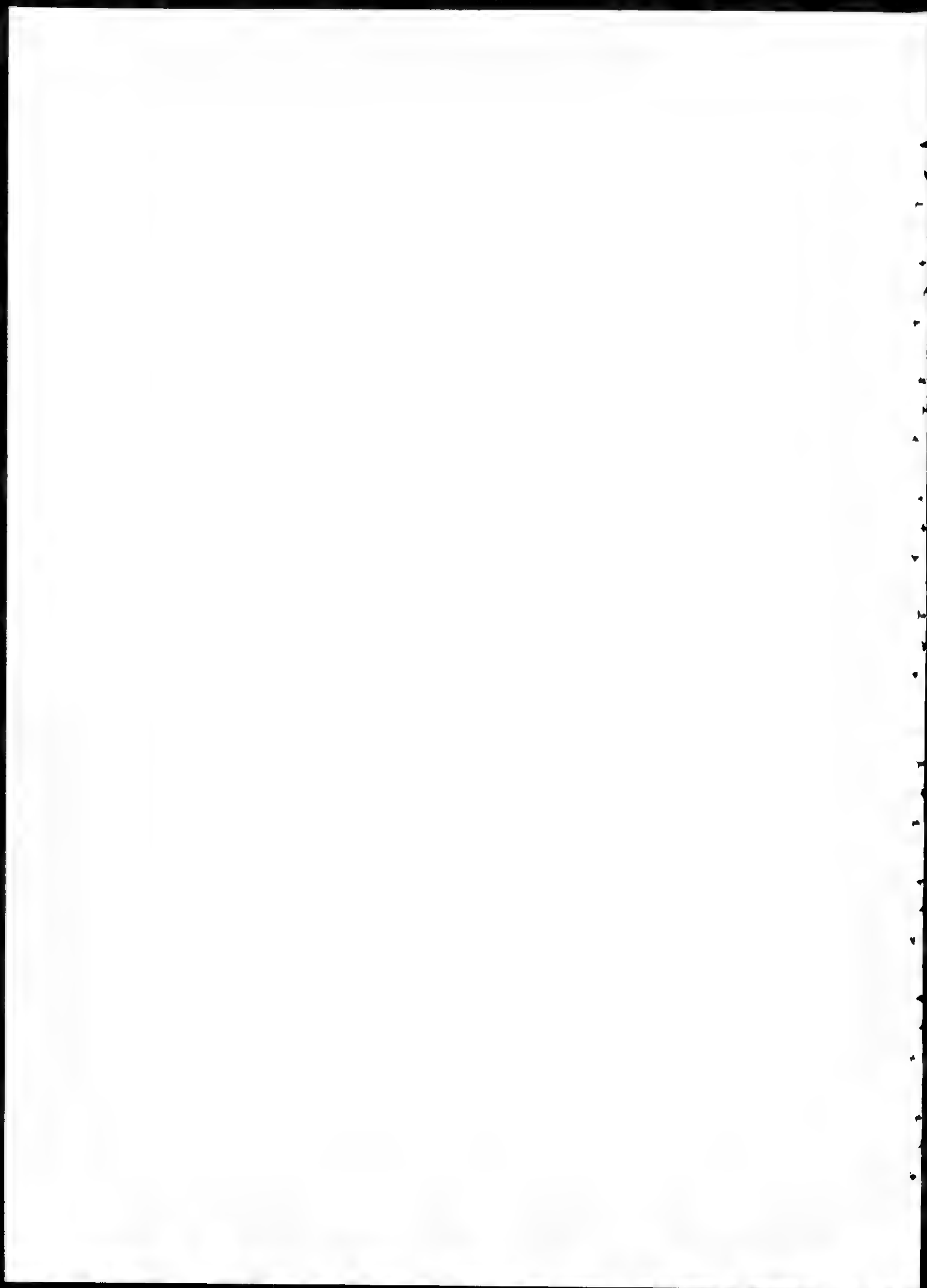
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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20049

YUMA MESA IRRIGATION AND DRAINAGE DISTRICT,  
APPELLANT

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR,  
APPELLEE

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

BRIEF FOR APPELLEE

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OPINION BELOW

The district court did not write an opinion. The court's findings of fact and conclusions of law, and order of dismissal, are set forth on pages 403-409 of the Joint Appendix.

JURISDICTION

The jurisdiction of the district court is claimed by the appellant to rest variously upon Title 11, Section 521 of the D.C. Code (Supp. V, 1966); 28 U.S.C. sec. 1331; and 28 U.S.C. sec. 1332. For the reasons set forth in the argument herein, the

appellee contends that the district court lacked jurisdiction. On December 17, 1965, the action was dismissed on motion of the appellee, on the ground that it was a suit against the United States for the maintenance of which no consent had been given (JA 402). Notice of appeal was filed on February 8, 1966. Jurisdiction of this Court rests on 28 U.S.C. sec. 1291.

#### STATEMENT OF CASE

On May 26, 1956, the Yuma Mesa Irrigation and Drainage District and the United States entered into a contract in which, among other things, the United States agreed to deliver to the District, from water stored and available in Lake Mead (the reservoir created by Hoover Dam),

\* \* \* such quantities of water, including all other waters diverted for use within the District from the Colorado River, as may be ordered by the District \* \* \* and as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres situate therein \* \* \* Provided, however, that the maximum rate of diversion at Imperial Dam of water for delivery hereunder shall be five hundred and twenty (520) cubic feet per second \* \* \*. [JA 16, 18.]

The right of the District to receive water was by paragraph 4(b) of the contract expressly made subject to a Treaty between the United States and Mexico signed on February 3, 1944 (JA 16).



On May 16, 1964, in Las Vegas, Nevada, the Secretary of the Interior announced that as a result of unusually low spring runoffs for the second consecutive year, deliveries of water stored in Lake Mead to those organizations and individuals in the Lower Basin of the Colorado River having the right by contract to divert such water, would be decreased by 10 percent. In implementation of this order, the Director of Region 3 of the United States Bureau of Reclamation wrote to the President of the Yuma Mesa Irrigation and Drainage District, in a letter dated May 19, 1964, the following (JA 20-21):

The ten percent cut will be effective June 1, 1964, and must therefore be reflected in your water orders submitted on May 27, 1964, in accordance with our current operating procedure, for inclusion as a part of the Master Schedule.

The amount of 176,000 acre-feet was scheduled for diversion to the Yuma Mesa Irrigation and Drainage District for the seven-month period of June through December 1964. This amount will therefore be reduced by 17,600 acre-feet, to 158,400 acre-feet. You may, of course, augment this by utilizing drainage water pumped within the boundaries of your District. The Bureau of Reclamation does not ask that each week's diversion, or even each month's, be reduced by an arbitrary ten percent. So long as the total diverted at Imperial Dam for your use for the seven-month period beginning June 1, 1964, does not exceed 158,400 acre-feet, the objective of water conservation will have been achieved in this year of scant supply.

If you wish to vary the monthly diversions, please meet promptly with Project Manager T. R. Moser of our Yuma Projects Office and provide him with a revised schedule. This schedule should not, of course, be made unrealistic by deferring until later months in this year an unduly large portion of the 17,600 acre-feet reduction. Please submit a new schedule of estimated monthly diversions for the period June 1 through December 31, 1964, as soon as you have met with Mr. Moser, but not later than your May 27 water order submittal.

All water ordered for a given week by your District, and available for diversion at Imperial Dam, will be charged to your District account whether taken or not. To do otherwise would result in loss of content in Lake Mead to no purpose, and in excess water being available to Mexico.

\* \* \* \* \*

Please call me if you desire to talk further regarding details of this reduction in water diversion.

In response to this letter, the President of the Yuma Mesa Irrigation and Drainage District submitted under protest, in a letter dated May 28, 1964 (JA 102-106), a revised water usage schedule for the final seven months of 1964. The revised schedule, however, for the reasons set forth in the letter accompanying it, reduced proposed water usage, not to a maximum of 158,400 acre-feet for the balance of the year, but instead

to a maximum of 164,380 acre-feet. After reviewing the matters set forth in that letter, Mr. T. H. Moser, the Bureau of Reclamation Project Manager, in a letter dated June 19, 1964 (JA 214), agreed that an upward adjustment in the amount of water which the District might use for the final seven months of 1964 was warranted, and accordingly informed the District that its total diversions for June through December of 1964 would be 163,280 acre-feet.

On June 30, 1964, the Yuma Mesa Irrigation and Drainage District filed in the District Court for the District of Columbia a complaint (JA 1-12) alleging that it had vested rights to the use of main stream Colorado River water, and that the Secretary of the Interior, in reducing by 10 percent the amount of water which the District might divert from the River, was acting arbitrarily, and without authority of law. The complaint sought an adjudication that the order of the Secretary of the Interior imposing a 10 percent cut in delivery of Colorado River water to the appellant was in violation of law, and an injunction prohibiting the Secretary from proceeding with the order. On July 8, 1964, the District filed a motion for preliminary injunction (JA 45); the motion was granted by Judge William B. Jones

on August 19, 1964 (JA 352). In the meantime, on July 16, 1964, the Regional Director of the Bureau of Reclamation had written to the President of Yuma Mesa Irrigation and Drainage District, informing him that it was not the intention of the Bureau of Reclamation that the reduction in diversions be applied in such a manner as to result in the impairment of crop yield to any individual, and that "additional water will be available for delivery to meet individual hardship cases if any develop" (JA 197).

The Secretary's order, the enforcement of which was enjoined with respect to the District, expired by its own terms at midnight on December 31, 1964. No similar order has since been issued.

On September 1, 1965, eight months after the expiration of the Secretary's order, the Irrigation District filed with the district court a Certificate of Readiness to place its action on the trial calendar (JA 362). On September 10, 1965, the Secretary filed an objection to the Certificate of Readiness (JA 363) and a motion to dismiss the appellant's complaint (JA 364). A hearing on the Secretary's motion was held on November 5, 1965, before Judge Corcoran, who dismissed the complaint because the Secretary's order was within his statutory authority and

because this action was, in fact, a suit against the sovereign without its consent (JA 401). Judge Corcoran's order granting the Secretary's motion, and his findings of fact and conclusions of law were filed on December 17, 1965 (JA 402-409). The District filed its notice of appeal on February 8, 1966 (JA 410).

#### SUMMARY OF ARGUMENT

This action is moot and should be dismissed because the order of the Secretary of the Interior, which is the sole subject of this action, by its own terms expired at midnight on December 31, 1964.

The order of the Secretary reducing the amount of water which the appellant might divert from the main stream of the Colorado River did not impair any property or contractual right possessed by the appellant, and thus did not constitute a taking or an illegal act. This order was within the statutory power of the Secretary of the Interior to issue and enforce, and is thus the action of the sovereign and, no consent thereto having been given, may not be made the subject of a suit in any court.

The Supreme Court of the United States has assumed exclusive and plenary jurisdiction over all questions relating to the right to take water from the main stream of the Colorado River, and for this additional reason the district court lacked jurisdiction of this action.

## ARGUMENT

### I

THIS ACTION, INVOLVING EXCLUSIVELY  
THE QUESTION OF THE VALIDITY OF AN  
ORDER OF THE SECRETARY OF THE INTERIOR  
WHICH BY ITS OWN TERMS EXPIRED AT MIDNIGHT  
ON DECEMBER 31, 1964, IS MOOT

The order of the Secretary of the Interior, cutting by 10 percent the amount of water which might be diverted from the Colorado River, was limited in duration to the "remainder of this calendar year" (JA 20), that is, to the time from the issuance of the order on May 16, 1964, until the termination of the year at midnight on December 31, 1964.

On August 19, 1964, the enforcement of this order as against the appellant was enjoined by Judge Jones (JA 352-353). After the order expired, no similar order was subsequently made.

Manifestly, therefore, this action is moot, for the Secretary's order, which alone is the subject matter of this case, has for two years ceased to be: if the order was valid, it no longer exists to be sustained; if invalid, it no longer exists to be set aside. As the Supreme Court said in St. Pierre v. United States, 319 U.S. 41, 42 (1943), with respect to a petition for the review of a prison sentence which had already been served:

We are of opinion that the case is moot because, after petitioner's service of his sentence and its expiration, there was no longer a subject matter on which the judgment of this Court could operate. A federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it. [Citations omitted.] The sentence cannot be enlarged by this Court's judgment, and reversal of the judgment below cannot operate to undo what has been done or restore to petitioner the penalty of the term of imprisonment which he has served.

So here, the Secretary's order having long ago expired, there is no subject matter on which a judgment of this Court can operate, and the appeal should be dismissed on the ground that the action is moot.

## II

THE DISTRICT COURT, IN ITS CONSIDERATION OF THE MERITS OF THIS CASE, CORRECTLY DISMISSED THE ACTION AS BEING AN UNCONSENTED SUIT AGAINST THE UNITED STATES

If it be assumed for any reason that this action is not now moot, and was not moot at the time the district court rendered its judgment, then it is clear that the district court's holding that the action must be dismissed as an uncon-sented suit against the sovereign was correct. The complaint in this action designated as the sole defendant the Secretary



of the Interior. The Secretary of the Interior, obviously, is an individual whose private actions on his own behalf are as much subject to the scrutiny and direction of the district court as are the private actions of any other individual. But, equally obviously, the Secretary of the Interior is also an agent of the sovereign, and his actions in that capacity are the actions of the sovereign. Thus in seeking relief against the "Secretary of the Interior," the appellant may in fact be seeking relief against the United States. If this is so, then the suit is barred, because it is, in reality, a suit against the Government over which the court, in the absence of consent, has no jurisdiction.

Definitive criteria for determining whether a suit is against a government official personally, and therefore maintainable, or against a government official in his capacity as representative of the sovereign, and therefore not maintainable, have been set forth by the Supreme Court in Larson v. Domestic & Foreign Corp., 337 U.S. 682 (1949). In that decision, at pp. 701-702, the Court stated that

\* \* \* the action of an officer of the sovereign (be it holding, taking or otherwise legally affecting the plaintiff's property) can be regarded as so "illegal" as to permit a suit for specific relief against the officer as an individual only

- [1] if it is not within the officer's statutory powers or,
- [2] if within those powers, only if the powers, or their exercise in the particular case, are constitutionally void.

The court below thus had before it the question whether the action of the Secretary of the Interior in reducing the amount of water which might be diverted by the appellant was so "illegal" as to permit a suit for specific relief against the Secretary of the Interior as an individual. The court correctly found that the Secretary's action was within his statutory powers, that those statutes are constitutional, that the powers were constitutionally exercised by the Secretary, and that his action, therefore, in the language of the Larson decision, supra, p. 703, was "inescapably the action of the United States and the effort to enjoin it must fail as an effort to enjoin the United States."

A. The Secretary's order reducing the amount of water which the appellant might divert from the main stream of the Colorado River during the last seven months of 1964 was not an abrogation of any right, contractual or otherwise, possessed by the appellant. - Before we get to the question of whether

the Secretary's allegedly "illegal" act was within or without his statutory authority, we must first consider whether his act was in fact illegal, or in any way wrongful. Preliminarily, it is essential to realize that such rights as the appellant may have to divert water from the Colorado River stem exclusively from the contract of May 26, 1956, between the appellant and the United States of America (JA 14-19). In its complaint, the District alleged that it had "vested rights" (JA 2, par. 5) or vested property rights (JA 6, par. 10), and in its brief (p. 15) the appellant implies that involved in this litigation are property rights which have their source elsewhere than in this contract. But this possibility is, as a matter of law, negated by the fact that the Colorado is a navigable river (Arizona v. California, 283 U.S. 423, 455 (1931)), hence its waters or the right to use them cannot be the property of any state or individual: "that the running water in a great navigable stream is capable of private ownership is inconceivable." United States v. Chandler-Dunbar Co., 229 U.S. 53, 69 (1913).

Perhaps, however, it is the intention of the appellant to argue that it has a "present perfected right." In Arizona v. California, 376 U.S. 340, 341 (1964), the Supreme Court defined "present perfected rights" in the following manner:

- (G) "Perfected right" means a water right acquired in accordance with state law, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works, and in addition shall include water rights created by the reservation of main-stream water for the use of federal establishments under federal law whether or not the water has been applied to beneficial use;
- (H) "Present perfected rights" means perfected rights, as here defined, existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act,  
\* \* \*.

Consequently, if it is the intention of the appellant to claim that it has a "present perfected right"--and thus a right which the Secretary of the Interior is "required to satisfy"--the appellant must show that as of June 25, 1929, it had acquired a water right under state law, and had exercised that right by the actual diversion of a specific quantity of water, and the application of that water to a defined area of land.

Not only has the appellant failed to make such a showing, but paragraph 6 of its complaint, which avers that specific quantities of water were first delivered to defined areas of

land within the boundaries of the District in 1943, renders legally and factually impossible the possession by the appellant of a "present perfected right."

Therefore, the only right which the appellant can possess with respect to the water of the Colorado River is the right pleaded in paragraph 7 of the complaint, and derived solely from a contract entered into by the Secretary of the Interior at his discretion, to have released to it from storage available in Lake Mead

\* \* \* such quantities of water, including all other waters diverted for use within the District from the Colorado River, as may be ordered by the District and as may be reasonably required and beneficially used for the irrigation of not to exceed 25,000 irrigable acres situate therein  
\* \* \*.

Having isolated the sole and exclusive measure of the appellant's rights, we may now turn our attention to a consideration of whether those rights have been invaded by the appellee. We infer from paragraphs 8 and 10 of the complaint that the action of the Secretary which is alleged to be "illegal" is his order of May 16, 1964, as implemented by the Regional Director of the Bureau of Reclamation in his letter of May 19, 1964 (JA 100-101), reducing by 10 percent, as of June 1, 1964,

the water to be delivered to all water user agencies, including the appellant, in the Lower Basin of the Colorado River, and charging the District for all water ordered by it and released from Lake Mead, whether or not the water is actually taken by the District.

Close analysis reveals, however, that the Secretary's order of May 16, 1964, did not in any respect abrogate his contractual obligations with respect to the appellant, for although in the letter dated May 19, 1964, the agent of the Secretary of the Interior informed the appellant of the limitations upon the amount of water which it might divert during the last seven months of 1964, a subsequent letter (JA 197) explained and pledged that

It was not, and is not, the intention of the Secretary of the Interior or of the Bureau of Reclamation that the reduction in diversions be applied in such manner as to result in impairment of crop yield to any individual.  
\* \* \*

\* \* \* Obviously additional water will be available for delivery to meet individual hardship cases if any develop.

If the District has only a contractual right to receive "such quantities of water \* \* \* as may be reasonably

required and beneficially used," and if the Secretary of the Interior's agent guaranteed in writing to make available to the District as much water as might be necessary to prevent impairment of crop yield to any individual, where is the abrogation of contract--the invasion of the appellant's rights--the supposed existence of which is the basis of this entire suit?

Manifestly, the appellant has no reasonable requirement for, nor can it beneficially use, water in excess of that necessary to avoid impairment of crop yield to any of its individual members. And it was, of course, this excess water--water which those having contracts with the Secretary of the Interior were in the habit of ordering, but which they wasted, or never took--which the Secretary was attempting to conserve. The Secretary did not intend, and he did not direct, that water actually needed by growing crops in the Lower Colorado River Basin not be delivered to those having contracts to receive such water; the Secretary of the Interior did intend that the water orders submitted by contractors in the Lower Basin reflect in fact the amounts of water "reasonably required and beneficially used" by the contractors. Since the amount of water to which the appellant by its contract with the Secretary of the Interior is



entitled is only the amount "reasonably required and beneficially used," the Secretary's order limiting the appellant to receiving that amount deprived the appellant of nothing to which it had a right. There was, consequently, no invasion of the District's contractual entitlements and thus no "illegal" act which may be the subject of a suit.

B. The Secretary's order was within his statutory powers. - That the Secretary of the Interior has been entrusted by the Congress with great authority over the Colorado River is acknowledged by the appellant itself, in paragraph 2 of its complaint (JA 1, 2), which correctly states that:

The defendant is the Secretary of the Interior of the United States and as such is charged with the administration of the laws, interstate compact, and treaty, relating to the storage and delivery of waters of the mainstream of the Colorado River, including the Reclamation Act of June 17, 1902, as amended, 43 U.S.C. §391 et seq.; the Boulder Canyon Project Act of 1928, as amended, 43 U.S.C. §620 et seq.; the Colorado River Compact, H. Doc. No. 717, 80th Cong., 2d Sess. (1948) A17; and the Mexican Water Treaty of 1944, Treaty Series 994, 59 Stat. 1219.

Of these statutes, the one having the most bearing on the authority of the Secretary of the Interior to regulate the use of the water of the Colorado River is the Boulder Canyon Project Act of December 21, 1928, 43 U.S.C. sec. 617. In

commenting upon this Act as a whole in Arizona v. California,  
373 U.S. 546, 589-590 (1963), Justice Black wrote:

In undertaking this ambitious and expensive project for the welfare of the people of the Lower Basin States and of the Nation, the United States assumed the responsibility for the construction, operation, and supervision of Boulder Dam and a great complex of other dams and works. Behind the dam were stored virtually all the waters of the main river, thus impounding not only the natural flow but also the great quantities of water previously allowed to run waste or to wreak destruction. The impounding of these waters, along with their regulated and systematic release to those with contracts, has promoted the spectacular development of the Lower Basin. Today, the United States operates a whole network of useful projects up and down the river, including the Hoover Dam, Davis Dam, Parker Dam, Headgate Rock Dam, Palo Verde Dam, Imperial Dam, Laguna Dam, Morelos Dam, and the All-American Canal System, and many lesser works. It was only natural that the United States, which was to make the benefits available and which had accepted the responsibility for the project's operation, would want to make certain that the waters were effectively used. All this vast, interlocking machinery--a dozen major works delivering water according to congressionally fixed priorities for home, agricultural, and industrial uses to people spread over thousands of square miles--could function efficiently only under unitary management, able to formulate and supervise a coordinated plan that could take account of the diverse, often conflicting interests of the people and communities of the Lower Basin States. Recognizing this, Congress put the Secretary of the Interior in charge of these works and entrusted him with sufficient power, principally the § 5 contract power, to direct, manage, and coordinate their operation.

This language needs no explanation or amplification. The effective utilization of the waters of the Colorado River, the unitary management of the River, and the formulation of coordinated plans for its regulation, taking into account the diverse, and sometimes conflicting, interests of the people and communities of the Lower Basin states: these are responsibilities which the United States has assumed, and which the Congress has entrusted to the Secretary of the Interior, bestowing upon him, inevitably and necessarily, "sufficient power" for the discharge of those responsibilities.

In view of this broad grant of authority to the Secretary of the Interior, how can we take seriously the appellant's contention, never uttered in so many words, but lurking behind every allegation, that the Secretary of the Interior lacks the power, during a period of water scarcity, to initiate water conservation measures along the Colorado River? That there was during the summer of 1964 a critical water situation has been ignored by the appellant, but not denied--nor could it be, since the very exhibits attached to the complaint establish that all the actions taken by the Secretary of the Interior and complained of by the appellant were the result of this critical situation. The news release

submitted as Plaintiff's Exhibit F (JA 31) contains a full discussion of the water situation existing in the spring of 1964, and on the last page of the release reports the Secretary's statement that (JA 34):

Prudence demands that all of us assume, at this point, that the drouth conditions which have prevailed during the past two years will continue in 1965. If this happens, all of us face the choice that further emergency conservation measures will be imperative. We must instill in all of our water users that idea that new water conservation practices must be instituted wherever possible and actions must be taken which will stretch our existing supplies to the limit.

Clearly, during the summer of 1964 when the need for unitary management and coordinated planning and regulation of the water of the Colorado River for effective utilization was, because of the scarcity of water, most acute, the Secretary had not only the authority, but the mandate, from Congress, to exercise his powers to prevent the return of the River to the very anarchy from which the Boulder Canyon Project Act was intended to rescue it. Cf. Arizona v. California, 373 U.S. 546, 588-589 (1963).

Nor did the Secretary perform his water conservation duties in such a way as to violate any of the other mandates of Congress. The appellant's conclusion that the filling of

Lake Powell is responsible for the reduction in the amount of water to be made available to users in the Lower Basin is not valid. The very materials submitted by the appellant as attachments to its complaint demonstrate the lack of causal connection between the two events.

The chart attached to Exhibit F showing "Storage in Major Colorado River Reservoirs" (JA 37) reveals that on May 7, 1964, there was stored in Lake Mead 14,601,000 acre-feet of water. The chart also shows that at an elevation of 1,083 feet, which is the minimum power operating level of Lake Mead, the amount of water stored in the Lake is 10,500,000 acre-feet. In other words, there was in Lake Mead, nine days before the Secretary's order, 4,101,000 acre-feet more water than was required to maintain the Lake at its minimum operating level for power production. In paragraph 11 of the complaint, the plaintiff below averred that 18,000,000 acre-feet of water was enough to satisfy all the consumptive use diversions in the Lower Basin for a period of at least four years. Presumably, then, one-fourth of 18,000,000 acre-feet, or 4,500,000 acre-feet, would be enough to satisfy consumptive use diversions for one year, and consequently the 4,101,000 acre-feet of water in Lake Mead

at the time of the Secretary's order would surely have sufficed to permit the Secretary of the Interior to deliver for the balance of 1964 to water users in the Lower Basin as much water as they might have asked to have delivered to them--all of which could have been done without releasing any water at all from Lake Powell.

Furthermore, paragraph 2 of the document entitled "Operation of Lake Mead Below Elevation 1123 by Reason of Resumption of Storage Operations at Lake Powell," also attached to the complaint (JA 35), contains the firm policy statement of the Secretary of the Interior that

Under no circumstance will Lake Mead be drawn below a minimum power operating level of elevation 1083 as a result of storage of water in Lake Powell. Any storage in Lake Powell will be used to avoid drawing Lake Mead below elevation 1083.

Thus, if the Secretary of the Interior were interested only in filling Lake Powell, he could have closed the gates at Glen Canyon, continued for almost a year to deliver water as abundantly as ever in the past from Lake Mead, and, at the end of the year, upon its developing that Lake Mead might fall below elevation 1083, he could have proceeded to release water from Lake Powell to keep Lake Mead at the proper elevation. Had the



Secretary taken this course of action, it would have been obvious that the attempted filling of Lake Powell would have affected by not one drop the amount of water ultimately available from Lake Mead, and would not, therefore, have interfered with or prevented the use of water for agricultural and domestic purposes. Any charge to the contrary would have been seen through immediately, for everyone along the Colorado River would know, after the depletion of Lake Powell, that if water were not available for agricultural purposes, it would be for the simple reason that there was none--a situation for which the Secretary of the Interior certainly could not be held responsible.

The only difference between what the Secretary could have done, and what he did do, is that instead of merely closing the gates at Glen Canyon, and continuing to release for as long as it existed as much water as anyone wanted from Lake Mead, the Secretary exercised foresight and courage in imposing upon all users of Lake Mead water the requirement that they reduce to the fullest extent possible, and, hopefully, at least by 10 percent, their diversions below Hoover Dam. The Secretary was not interested in the easy out: in saying next year, or two years hence, "Well, I gave you all the water that



you wanted when I had it, but now I have no more"; rather, he was striving to be able to say, should conditions so require: "Although the drought has continued, and this year, as last year, I can't give you as much as you want, still I can give you some." Thus, it is not<sup>to</sup> the mere closing of the gates at Glen Canyon that can be attributed the Secretary's order of May 19, for that order is not physically or logically a consequence of the closing of the gates--and indeed, as we have pointed out, had the water shortage continued, the gates would have opened, and no water that was obligated to go downstream would have failed, in its appointed time, to do so. It must be clear that the purpose of the Secretary's order was to conserve water, that the reason for the order was the lack of water within the Colorado River Basin, and that the Secretary's problem in filling Lake Powell is not the cause of the water shortage, but is itself merely another consequence of the shortage.

Another contention with respect to the Secretary's supposed lack of authority to order a reduction in the amount of water which might be received by contractors along the Lower Colorado River is that set forth in paragraph 12 of the

complaint (JA 9) and repeated on pages 29 and 30 of the appellant's brief. There, the appellant points out that the decree in Arizona v. California, 376 U.S. 340 (1964) (Section II(B)(3)), provides that if insufficient main stream water is available for release to satisfy annual consumptive use of 7,500,000 acre-feet in the States of Arizona, California and Nevada, in no event shall more than 4,400,000 acre-feet be apportioned for use in California. The appellant argues that since the total scheduled annual consumptive use of main stream waters by Lower Basin users in the three states for 1964 is considerably less than 7,500,000 acre-feet, while that scheduled for California users is more than 500,000 acre-feet in excess of 4,400,000 acre-feet, the Secretary's order instituting an across-the-board 10 percent cut is illegal and beyond his statutory authority.

In considering this argument, it is important to realize that the water scarcity which occasioned the Secretary's order of May 16, 1964, had not reached such proportions as to require the Secretary to resort to the provisions of Section II(B)(3) of the decree in Arizona v. California. Therefore, in theory, the amount of main stream water apportioned to each Lower Basin state was, as set forth in Section II(B)(4) of the decree,

2,800,000 acre-feet for use in Arizona, 4,400,000 acre-feet for use in California, and 300,000 acre-feet for use in Nevada. If, as the appellant contends, Arizona and Nevada were not using the amount of water to which they are entitled, then the Secretary, by express provision of the decree, could have released to California the apportioned but unused water of the other two states. The part of the decree so providing is paragraph (II(B)(6), which states (340 U.S. at p. 343) that

If, in any one year, water apportioned for consumptive use in a State will not be consumed in that State, whether for the reason that delivery contracts for the full amount of the State's apportionment are not in effect or that users cannot apply all of such water to beneficial uses, or for any other reason, nothing in this decree shall be construed as prohibiting the Secretary of the Interior from releasing such apportioned but unused water during such year for consumptive use in the other States. No rights to the recurrent use of such water shall accrue by reason of the use thereof; \* \* \*.

Since, on the basis of this provision, it was within the discretion of the Secretary of the Interior to permit water uses in California in excess of 4,400,000 acre-feet, it must also have been within the discretion of the Secretary not to permit such uses; which is to say, the allegation, in effect, that the Secretary was compelled to terminate uses in California

in excess of 4,400,000 acre-feet, before he could initiate water conservation measures in Arizona, was simply not supported by the decree relied upon by the appellant for that conclusion. What the Secretary has attempted to do was require all water users, on both sides of the Colorado throughout the Lower Basin, to come to grips with the necessity of saving water. The implication of the appellant's contention, that water conservation measures are not the responsibility of water users in Arizona, evidences so parochial an attitude, so complete a disregard for the national welfare, that it is its own best refutation. It is unthinkable that water might legally be wasted on one side of the River, while a lack of it plagues the other side.

Similarly, the argument on pages 30 and 31 of the appellant's brief, that a reduction in water deliveries to users within the United States may not be made without first making a reduction in water deliveries to Mexico, again betrays a complete lack of awareness of the realities confronting the Secretary in 1964. As the portion of the Mexican Treaty quoted by the appellant indicates (Br. 31), the reduction in deliveries to Mexico may be made "in the event of extraordinary drought." There was not in 1964 an extraordinary drought, although there

was a critical water situation. Having in storage the water to deliver to Mexico, the United States, as it was bound to do, continued to honor its treaty obligation. But obviously, this does not mean that the Secretary of the Interior, because he released prescribed quantities of water to Mexico, was precluded from instituting water conservation measures within the United States. Moreover--and this is conclusive on this matter--the water deliveries under the contract between the appellant and the United States were expressly made subject to the treaty with Mexico; the treaty with Mexico was not made subject to the contract with the appellant.

The appellant's charge that the Secretary delivered excess water to Mexico in 1963 is almost completely explained by the allegation in the complaint that the appellant should not be charged "with water ordered which cannot be used because of unavoidable circumstances \* \* \*" (JA 10, par. 14). It is this very water, ordered by the District, but not used by it, together with water ordered but not used by others along the River, which goes to make up the great bulk of the overdeliveries to Mexico. If the appellant is sincere in alleging that this overdelivery was a failure by the Secretary to comply with the

treaty with Mexico, then it should recognize the need of controlling and curtailing overorders--the object sought to be attained by the Secretary in charging water users for water ordered but not used. If, on the other hand, the appellant is sincere in its contention that these overorders are "unavoidable," it cannot in good conscience charge the Secretary with failing to limit the water deliveries to Mexico to those required by the treaty, since the excess waters flowing down to Mexico consisted in the main of the "unavoidable" overorders submitted by domestic water users such as the appellant.

In any event, the appellant does not cite any statutory authority prohibiting the Secretary from charging it for water ordered but not used, and that this practice is arbitrary is a conclusion for which the arguments of the appellant afford no basis. To the contrary: if by this practice the Secretary can control and limit overdeliveries to Mexico, then it is eminently reasonable and justifiable.

Thus, a consideration of the "law of the Colorado River" reveals that the Secretary possesses extensive powers to manage and control it. The question then becomes, has the Secretary, in this particular case, exercised these powers legally?

C. The Secretary's order was a valid exercise of his statutory powers. - Here, if the Secretary's order is wrongful, which we categorically deny, it is so because it interferes with some contractual rights of the appellant, and to that extent abrogates the Secretary's water delivery contract with the appellant. The appellant has not denied, nor can anyone doubt, that the Secretary had the power to enter into the contract with the District. Section 5 of the Boulder Canyon Project Act, 43 U.S.C. sec. 617d, expressly authorizes the Secretary "to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon \* \* \*." Having the power to enter into a contract, the Secretary necessarily has the power, wholly or partially, to abrogate the contract; as the Supreme Court pointed out in the Larson case, supra (337 U.S. 703, fn. 27), every suit against the United States for breach of contract imparts a recognition that the action alleged to have been the breach of contract was the action of the United States, else the suit could not be maintained:



"It has never been suggested that a suit in the Court of Claims for breach of an express contract could be defeated because the action of the officer in breaching it constituted a tort and was therefore 'unauthorized.'"

Not only is the Secretary's power to breach a contract a necessary corollary of his power to enter into a contract, but it is a power essential to the discharge of his responsibilities "to formulate and supervise a coordinated plan [for the utilization of the waters of the Colorado River] that could take account of the diverse, often conflicting interests of the people and communities of the Lower Basin States." To formulate such a coordinated plan for a region covering thousands of square miles, it may happen that, occasionally, the rights of some individuals and entities will be invaded; to the extent that this may occur, the injured parties are entitled to compensation for the wrong done them by the Government. But, to again quote from the Larson case, supra, p. 704:

\* \* \* it is one thing to provide a method by which a citizen may be compensated for a wrong done to him by the Government. It is a far different matter to permit a court to exercise its compulsive powers to restrain the Government from acting, or to compel it to act. There are the strongest reasons of public policy for the rule that such relief cannot be had against the sovereign. The Government, as representative of the community as a whole, cannot be stopped in its tracks by any plaintiff who presents a disputed question of property or contract right. As was early recognized, "The interference of the Courts with the performance of the ordinary duties of the executive departments of the government would be productive of nothing but mischief . . . ."

Hence, even were the Secretary's order, with respect to the appellant, a breach of contract (which we again deny), its enforcement still may not be enjoined by this Court, for the action of the Secretary, being within the scope of his authority, is the action of the sovereign, and this suit, to enjoin that action, must be dismissed.

If we are correct in our conclusion that the Secretary clearly has the authority when circumstances so warrant to refuse to comply with a contractual obligation, and that the sole remedy of the appellant is a suit for compensation for the injury it has suffered (and we repeat that appellant in this matter has in fact suffered no injury, because the order was never enforced against it), then it becomes completely unnecessary to consider

the appellant's arguments with respect to the applicability of the Administrative Procedure Act, 5 U.S.C. sec. 551 et seq. (Br. 24-25). But even its contentions on this point are incorrect.

The Administrative Procedure Act has no application to the Secretary's order. That order was a policy making statement of general applicability and future effect, and thus, if at all within the purview of the Administrative Procedure Act, within the purview only of the provisions relating to "rules." Yet those same provisions expressly except from their coverage matters relating, among other things, to contracts. The Secretary's order, pertaining, as it did, only to contracts, is not, therefore, an order with respect to which notice and an opportunity to participate in its formulation must be given in accordance with the Administrative Procedure Act. Hence the allegation that the order was issued in violation of the Administrative Procedure Act is baseless, for that Act in no way governs the issuance of orders relating to contracts. Moreover, the Administrative Procedure Act does not extend "the jurisdiction of federal courts to cases not otherwise within their competence. [Citing cases.] The purpose of Section 10 is to define the procedures and manner of judicial review of agency action, rather

than to confer jurisdiction upon the courts." Ove Gustavsson Contracting Company v. Floete, 278 F.2d 912 (C.A. 2, 1960); Chournos v. United States, 335 F.2d 918, 919 (C.A. 10, 1964).<sup>1/</sup>

D. The relief sought by the appellant would require affirmative action by the sovereign. - There is yet another reason also founded on the Larson case why this suit must be dismissed. In footnote 11 on page 691 of the Larson decision, the Court noted (337 U.S. 682) that

Of course, a suit may fail, as one against the sovereign, even if it is claimed that the officer being sued has acted unconstitutionally or beyond his statutory powers, if the relief requested can not be granted by merely ordering the cessation of the conduct complained of but will require affirmative action by the sovereign or the disposition of unquestionably sovereign property.

Although the injunctive relief sought by the plaintiff below in this action was negatively framed--"that defendant be restrained and enjoined pendente lite from imposing the ten percent cut in delivery of Colorado River water to plaintiff"--it is patent that the relief actually sought required the affirmative

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<sup>1/</sup> Moreover, even if this were not true, appellant made no attempt to exhaust its administrative remedies within the Department of the Interior.

action of releasing waters from Lake Mead and from Imperial Dam, and delivering them to the District. In fine, the injunction sought by the appellant would not have stayed the Secretary from doing what he sought to do, but would have required the Secretary to do what he wished not to do. Even more: it is not the Secretary, in his individual capacity, who would be required by an injunction to act; it is the sovereign, the owner of these vast storage facilities, through its employees who physically operate the facilities, which will be constrained by an injunction, to release waters at the beck and call of the appellant.

Thus, the aim of the appellant is clearly to control "affirmative action by the sovereign." See New Mexico v. Backer, 199 F.2d 426, 428 (C.A. 10, 1952), and Hudspeth County Conserv. & Rec. Dist. No. 1 v. Robbins, 213 F.2d 425, 432 (C.A. 5, 1954). In those cases, on facts very similar to those here involved, the injunctive relief sought against the officers responsible for project operation was denied because the suits were in substance against the United States. In Backer, the Court of Appeals for the Tenth Circuit said (p. 428):

The United States could not hold or operate this vast project except through its officials and agents. Backer was performing these functions for the Secretary of the Interior and

under his instructions. Whatever he did, he did for the Secretary under authority of the reclamation laws of the United States. The operation of the project and facilities depended upon the flow of water from the reservoir. If this flow could be enjoined or affected by court decree or order directed to Backer, he would be under the direction of the court and not his superiors as representatives of the United States. It would be a complete ouster of the United States over the control and management of its own property and facilities.

And in Robbins the Fifth Circuit Court declared with equal clarity (p. 432):

Whatever may be the merits of the plaintiffs' contentions, the court would have no jurisdiction by declaratory judgment [citations omitted] or by injunction against Government officers to substitute itself in any part of the management and operation of the dams, reservoirs and facilities for the agency designated by Congress. \*  
\* \*

Because the relief sought by the appellant would not only require affirmative action on the part of the appellant, but would also submit to the control of the judicial branch of the Government the immense Boulder Canyon Project, intended by the Congress to be administered by the executive branch of the Government, this suit may not be maintained.

III

THE SUPREME COURT OF THE UNITED STATES  
ALONE HAS JURISDICTION TO CONFIRM OR  
DENY ASSERTED RIGHTS TO WATER IN THE  
MAIN STREAM OF THE COLORADO RIVER

In Arizona v. California, 373 U.S. 546, 551 (1963), the Supreme Court said in the first paragraph of its decision, "The basic controversy in the case is over how much water each State has a legal right to use out of the waters of the Colorado River and its tributaries." All of the Lower Basin States were parties to this action. The Court's decision, inter alia, was that the Secretary of the Interior was authorized by the Boulder Canyon Project Act to carry out the allocation of the waters of the main Colorado River among the Lower Basin States and to decide which users within each State would get water (373 U.S. 580), two of the main limitations on the powers of the Secretary being that California might not receive more than 4,400,000 acre-feet of water out of the first 7,500,000 acre-feet of main stream Colorado River water (373 U.S. 583), and that present perfected rights must be satisfied (373 U.S. 584). Both of these limitations were expressly set forth in the decree entered in the case by the Supreme Court on March 9, 1964 (Arizona v. California, 376 U.S. 340); the former in Paragraph II(B)(1) of the decree, the latter in Paragraphs II(A)(2) and II(B)(3) of the decree.



Paragraph VI of the decree provides a specific procedure for the ascertainment of the "present perfected rights" which the Secretary is required to satisfy. The final paragraph of the decree (Paragraph IX) states that (376 U.S. 353):

Any of the parties may apply at the foot of this decree for its amendment or for further relief. The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy.

And the subject matter in controversy, it is well here to repeat, is the right to use the water of the Colorado River.

In the light of this decree, let us turn again to the complaint, and consider, first, the allegation in paragraph 5, that the appellant has "vested rights to the use of mainstream Colorado River water." We have already pointed out that the best right, as against the Secretary of the Interior, which anyone can have in the waters of the Colorado River, is a "present perfected right." If the appellant's allegation be considered sufficient to raise the issue of whether it has a present perfected right, then it attempts to bring before this Court a question for the resolution of which the Supreme Court, in Paragraph VI of the decree in Arizona v. California, has provided the exclusive procedure.

Or consider the allegation of paragraph 11 of the complaint, that the Secretary of the Interior is according the use of water for power a priority over the use of water for irrigation purposes. If this charge were true, the Secretary would be violating the dictates of Paragraph II(A) of the decree, and the appropriate method of securing the benefit of the decree would be by a supplemental bill in the court which issued the original decree, Independent Coal and Coke Company v. United States, 274 U.S. 640, 647 (1927); and the Supreme Court here has specifically reserved unto itself, in Paragraph IX of the decree, jurisdiction for the purpose of rendering such a supplementary decree.

Similarly, the allegation in paragraph 12 of the complaint, that the Secretary's order making an equal pro rata reduction of 10 percent in the diversion of all waters in the Lower Basin is contrary to the mandate of the decree in Arizona v. California, requires for its consideration on the merits an interpretation of that decree which only the Supreme Court can make. This is so not only because of the express language of Paragraph IX of the decree, reserving to the Supreme Court jurisdiction to consider all matters that may "at any time be deemed proper in

relation to the subject matter in controversy," but also it is so by virtue of the well-settled doctrine with respect to courts of concurrent jurisdiction, that the court which first acquires jurisdiction of specific property by the due commencement of a suit in that court, from which it appears that it is or will become necessary to the complete determination of the controversy involved to exercise dominion over that property, thereby withdraws that property from the jurisdiction of every other court and entitles the former to retain the control of it requisite to effectuate its judgment or decree in the suit free from the interference of every other tribunal. Lang v. Choctaw, Oklahoma and Gulf R. Co., 160 Fed. 355, 359 (C.A. 8, 1908).

If this statement as to the exclusiveness of jurisdiction in a particular situation is true with respect to other courts, then how much more must it be true with respect to a situation where the first court having jurisdiction over the property involved in the suit is the highest court in the land. And if this is true as to every case before the Supreme Court as a matter of general law, how much more true must it be the case here, where the Supreme Court has expressly asserted its intention to continue to exercise jurisdiction over all aspects of the subject matter of the litigation in Arizona v. California.

We submit that through the operation of the general legal principle here discussed, and by the express direction of the Supreme Court, the only forum which may consider on their merits allegations that the Secretary of the Interior is not complying with the Boulder Canyon Project Act, or is not honoring present perfected rights, is the Supreme Court of the United States.

And it takes but a moment's reflection to realize that were this Court in the District of Columbia, and other state and federal courts in California, Arizona, and Nevada, each to render, on the basis of its own interpretation of the "law of the river," and on the basis of the peculiar factual situation before it, judgments randomly restraining or directing the Secretary of the Interior in his administration of the River, then the unitary management asserted by the Supreme Court to be essential to the efficient functioning of the vast interlocking machinery of dams and reservoirs along the Colorado River can never be attained, and the national interests to be served by that management will never be served.

Although both the "law of the river" and the physical realities of the river require the conclusion that suits affecting

the Secretary's administration of the Colorado River can be brought only in the Supreme Court, an additional factor compelling the same conclusion is the enactment by the Congress of the Colorado River Storage Project Act, Section 14 of which (43 U.S.C. sec. 620m) provides that

In the operation and maintenance of all facilities, authorized by Federal law and under the jurisdiction and supervision of the Secretary of the Interior, in the basin of the Colorado River, the Secretary of the Interior is directed to comply with the applicable provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Treaty with the United Mexican States, in the storage and release of water from reservoirs in the Colorado River Basin. In the event of the failure of the Secretary of the Interior to so comply, any State of the Colorado River Basin may maintain an action in the Supreme Court of the United States to enforce the provisions of this section, and consent is given to the joinder of the United States as a party in such suit or suits, as a defendant or otherwise.

In the report on the bill which eventually became the Colorado River Storage Act (S. 500, 84th Cong., 1st sess.), the Senate Committee on Interior and Insular Affairs, with respect to the Section just quoted, wrote (S. Rept. No. 128, 84th Cong., 1st sess. (1955) pp. 14, 15) that it

\* \* \* would grant consent to suits against the United States in the Supreme Court by States in the Colorado River Basin to enforce the provisions of specifically named compacts, projects, Federal statutes, and treaties relating to the release of water from reservoirs in the basin.

It is clear that the assumption upon which the statute is predicated is that all suits against the Secretary of the Interior involving the allegation that the Secretary is acting in violation of the "law of the river" are in reality suits against the United States, which may not be maintained except by the consent of the Congress. Thus, in this statute, the Congress authorizes the United States to be sued in such cases, but this consent to suit extends only to the States of the Colorado River Basin. That Congress knowingly and purposely confined the consent to States is established by another excerpt from the Senate Report on the Colorado River Storage Act (S. Rept. No. 128, supra, at p. 15):

The waiver of sovereign immunity of the United States goes only to suits brought by the basin States and not to suits by any other political entity; action would have to be brought by the State itself, and determination as to whether to bring action as parens patriae would rest with the State.

Obviously, the initiation of suits by individuals to have the immense facilities of a great river system managed to

meet their individual needs was not intended by Congress, nor was consent to the maintenance of such suits given; to the contrary, the report on the bill makes clear that individual grievances are to have redress, if at all, only by an action brought by the state on behalf of the individual. And, of course, that action must be brought, by the conditions of the consent statute, in the Supreme Court only.

Thus, both because the decree in Arizona v. California reserves to the Supreme Court plenary and exclusive jurisdiction over all questions relating to the right to use main stream Colorado River water in the Lower Basin, and because the Congress by statute has directed that suits involving the administration of the Colorado River be brought in the Supreme Court only, this Court lacks the jurisdiction to consider on their merits any of the appellant's allegations, and must, accordingly, dismiss the action for lack of jurisdiction.

#### CONCLUSION

Although the discussion of our argument that this case is moot has occupied the least space in this brief, it is,



we believe, a compelling reason for dismissing the appeal. However, should this Court consider the merits of the appeal, then the judgment of the district court should be affirmed, for the reasons heretofore set forth.

Respectfully,

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DECEMBER 1966

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BRIEF OF THE STATE OF CALIFORNIA  
AS AMICUS CURIAE

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20049

YUMA MESA IRRIGATION AND DRAINAGE DISTRICT,

Appellant,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR,

Appellee.

Appeal From An Order Of The United States District Court  
For The District Of Columbia

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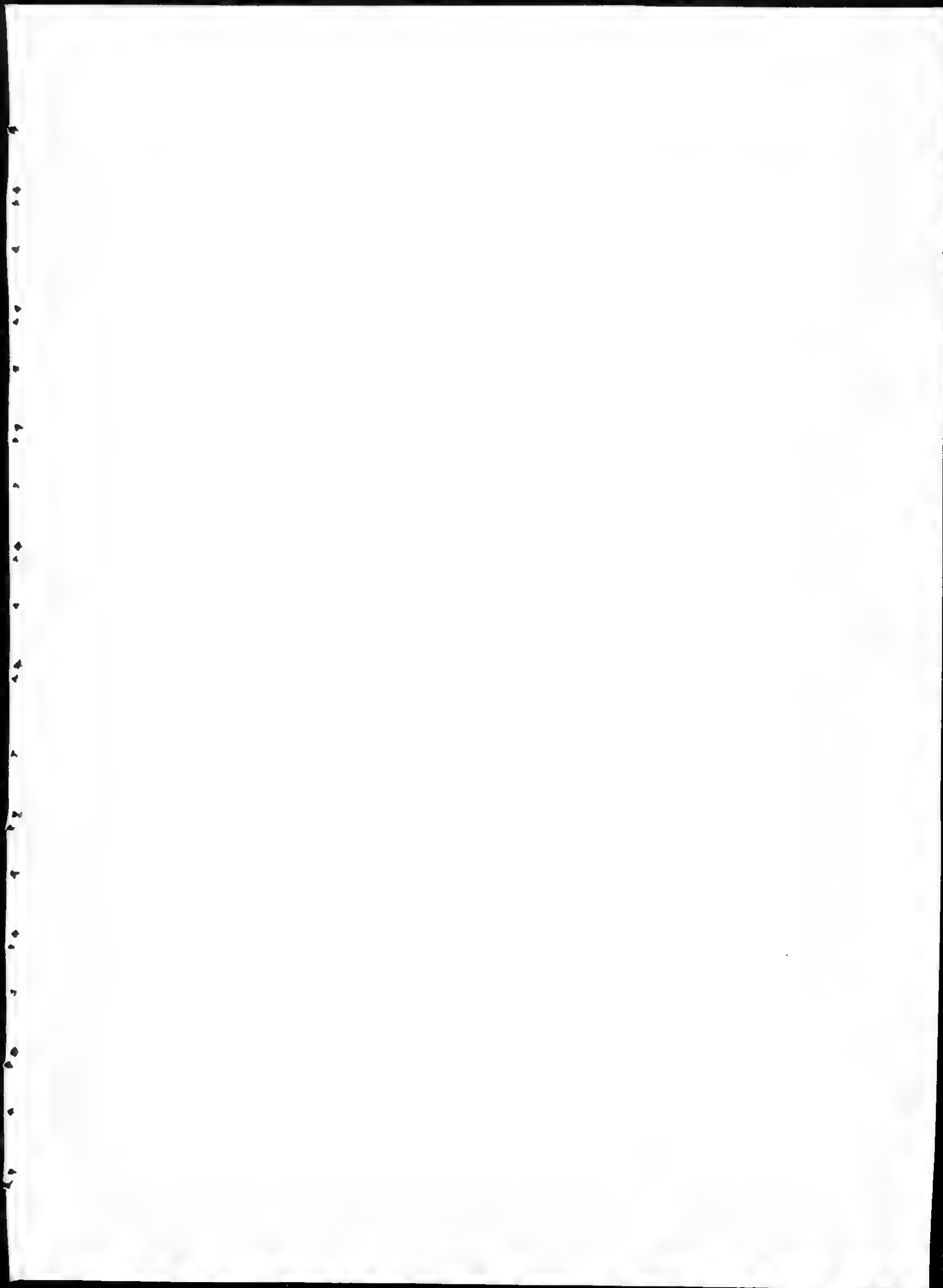
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United States Court of Appeals  
for the District of Columbia Circuit

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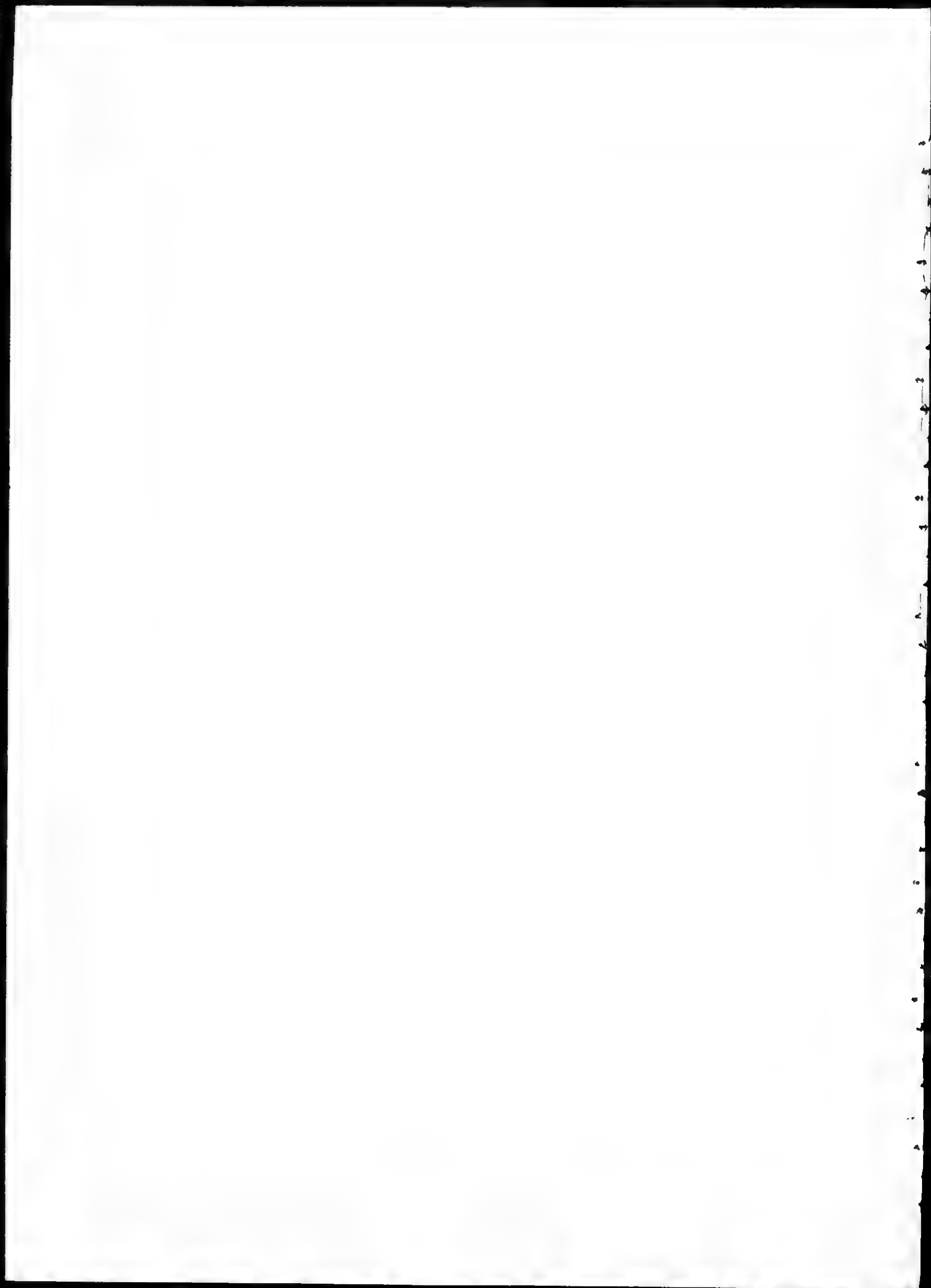


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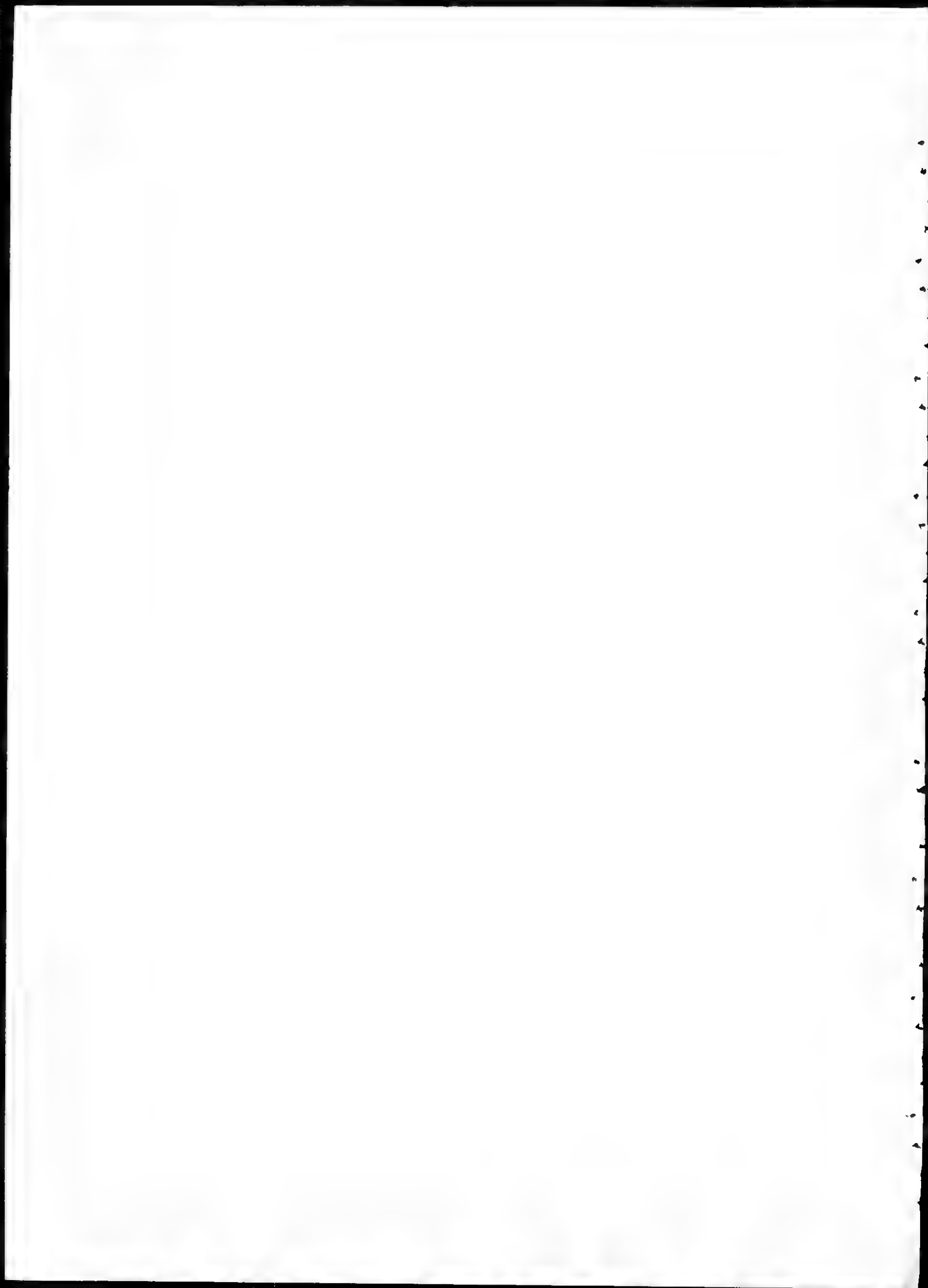
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The State of California, through its Attorney General, respectfully requests this Court to reverse and remand this cause to the United States District Court for the District of Columbia with instructions to vacate the judgment below, which dismissed the complaint on the merits, and to enter instead a judgment which dismisses the complaint solely on the ground that the matter has been rendered moot.

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER BELOW

The Findings of Fact, Conclusions of Law, and Order of the United States District Court for the District of Columbia are reported at 253 F. Supp. 909. They are printed as Joint Appendix, pp. 402-08.

### INTEREST OF THE AMICUS CURIAE

The State of California files this brief amicus curiae in its capacity as parens patriae with respect to California users of Colorado River water. Public agencies of the State of California depend in large measure upon the waters of the Colorado River System, and the economy of the State is vitally affected by the security of their water supply from this source. These agencies of the State are The Metropolitan Water District of Southern California, Imperial Irrigation District, Coachella Valley County Water District, and Palo Verde Irrigation District. They and a considerable number of individuals hold contracts with the United States for the storage and delivery of water, made pursuant to Section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d).

The Appellant herein, the Yuma Mesa Irrigation and Drainage District, is a party to a contract with the United States for the storage and delivery of water made pursuant to the same section of the same statute.

The action of the Secretary of the Interior, of which the Appellant complains, was the issuance and enforcement of an order applicable to water users in California as well as Arizona and Nevada, which the complainant alleged, among other things, violated the Boulder Canyon Project Act and other statutes which have a common application to Arizona and California as well as other states in which Colorado River System water is used.

The court below entered a judgment on the merits, sustaining the Secretary's action. But the case had become moot, for the reasons stated below, before the court entered that judgment, and the court should not have

decided it on the merits, for either side. We therefore ask this Court to reverse and remand with instructions to vacate that judgment, and, in place thereof, to enter one dismissing the case as moot. If this is not done, the judgment below will stand as an adverse precedent, if not stare decisis, in the construction of statutes controlling the use of water in California as well as in Arizona. Cf. Arizona v. California, et al., 373 U.S. 546 (1963).

#### STATEMENT OF THE CASE

The Secretary of the Interior, on May 16, 1964, issued an order curtailing deliveries of water from Lake Mead to users in Arizona, California, and Nevada, for the remainder of calendar year 1964. Appellant, like certain of the California water users, was advised by the Regional Director of the Bureau of Reclamation on May 19, 1964, that the curtailment would be equivalent to ten percent of total contract deliveries scheduled for calendar 1964, but this percentage was modified to approximately 7.2 percent on June 19, 1964.

Appellant filed a complaint for review, for declaratory judgment, and for injunctive relief in the United States District Court for the District of Columbia, June 30, 1964. It obtained a preliminary injunction on August 19, 1964, against the Secretary, restraining and enjoining him from enforcing and continuing the enforcement of his order of May 16, 1964. It alleged that his action exceeded his statutory authority, and violated due process requirements of the federal constitution and statutes.

Thereafter, on October 3, 1964, the Secretary promulgated new regulations setting forth "Procedures for the adoption of determinations relating to water conservation practices with respect to water reasonably required to be delivered to contractors under Boulder Canyon Project Act contracts with the United States for delivery of Colorado River water for use in Arizona, California, and Nevada" (29 F.R. 13605, October 3, 1964). The net effect of the regulations is to preclude the Secretary from hereafter curtailing water deliveries to Appellant and other like contractors in California, Arizona, and Nevada without first consulting them and making determinations relating to water conservation measures and operating practices to be applied to such deliveries to the end that reasonable requirements for beneficial use shall not be exceeded. Opportunity to comment on or object to these determinations, once arrived at, is afforded every such contractor, including the right to appeal to the Secretary from a final determination which aggrieves any contractor. The instant complaint alleged, in effect, that this had not been done with respect to the order complained of. We take no position as to whether the new regulations do meet constitutional and statutory standards of due process.

On December 31, 1964, the Secretary's order of which Appellants complain in the present action expired by its own terms. The case (filed four months earlier) had thus become moot by that date, for two reasons: (1) the order complained of was no longer effective, and (2) could not be reinstated or duplicated without new proceedings under the new regulations theretofore promulgated, and such proceedings would thus pose new issues.

Nevertheless, the Secretary answered and later moved to dismiss the complaint on the merits. After hearing, on December 17, 1965 (a year after the case had become moot), the District Court granted the Secretary's motion to dismiss and dissolve the preliminary injunction.

The court below, proceeding to consider the complaint and the Secretary's motion on the merits, concluded in substance that the Boulder Canyon Project Act authorized the Secretary to curtail delivery of water to the complainant, and to do so without prior notice, investigation, or hearing. Manifestly, these are major interpretations of a statute which is now, and has been for some time, the subject of consideration by the United States Supreme Court in Arizona v. California, et al., 373 U.S. 546 (1963). This case is now on the Supreme Court's docket for further proceedings, as No. 8, Original.

#### ARGUMENT

The judgment below on the merits, having been rendered moot by the expiration of the Secretary's curtailment order of December 31, 1964, and the issuance of new regulations, should be reversed, and the case should be remanded to the District Court with instructions to dismiss solely on that ground, instead of on the merits.

Unless the judgment of the District Court is reversed and vacated, it stands as a determination, made purportedly on the merits, but actually as an advisory opinion in a moot case, that the Secretary was acting within his statutory authority in curtailing water deliveries under contracts which the United States had entered into with the Appellant for the storage and delivery of Colorado River waters stored at Lake Mead, and in doing so with no pretense of due process.

That conclusion will create an adverse precedent as to water users in California under contracts made under the same section of the Boulder Canyon Project Act, even though the basis for Appellant's complaint--the Secretary's curtailment order--no longer exists, new procedural regulations now control, and the cause is moot.<sup>1/</sup>

The Supreme Court of the United States has consistently followed the practice of disposing of cases such as this in the manner we urge this Court to follow. Thus:

In Brownlow v. Schwartz, 261 U.S. 216, 218 (1923), the Court indicated that where a case has become moot after the judgment below, the "established practice" is "to dispose of the case, not merely of the appellate proceedings which brought it here," and, to do so, "to reverse the judgment below with instructions to dismiss the bill of complaint or petition."

Mr. Justice Douglas, speaking for the Court in United States v. Munsingwear, Inc., 340 U.S. 36 (1950), which held that a judgment which had become moot was nevertheless res judicata, said (p. 39):

"... The established practice of the Court in dealing with a civil case from a Court in the federal system which has become

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<sup>1/</sup> See Scott, Collateral Estoppel By Judgment, 56 Harv. L. Rev. 1. Professor Scott concludes (p. 16):

"In situations like this where the controversy has become moot before the appellate court has made its decision, it would seem that the better practice is not merely to dismiss the appeal, but to dismiss the suit or direct the lower court to do so. The result then clearly is that the matter will not be res judicata since there is no judgment on the merits."



moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss. That was said in *Duke Power Co. v. Greenwood County*, 299 U.S. 259, 267, 81 L.ed. 178, 182, 57 S. Ct. 202, to be 'the duty of the Appellate Court.'"<sup>2/</sup>

If this practice is appropriately applied to dispose of cases which become moot while on appeal, an even stronger case for its application can be made where the cause became moot even before judgment was rendered by the lower court, as is the case in this proceeding.<sup>3/</sup>

The Supreme Court has also applied the rule in cases rendered moot by legislation. In American Public Power Association, City of Jamestown, New York et al. v. Power Authority of the State of New York, 355 U.S. 64 (1957), the Court vacated a judgment of the United States Court of Appeals for the District of Columbia denying effect to a Senate Reservation to the 1950 Treaty with Canada, and holding that the Federal Power Act was applicable to a power development in the Niagara River, where that judgment was entered prior to the passage of specific legislation by Congress authorizing the issuance of a license to the Power Authority of the State of New York, with

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2/ A footnote (p. 39) states that "this has become the standard disposition in federal civil cases," citing 32 cases. The same practice has been followed in later cases, e.g., *McKay v. Clackamas County*, 349 U.S. 909 (1955); *Garcia v. Landon*, 348 U.S. 866 (1954); *Brotherhood of R. R. Trainmen, Local Lodge No. 721 v. Central of Georgia Ry. Co.*, 243 F.2d 793 (5th Cir. 1957).

3/ In the instant case, the Secretary's order expired on December 31, 1964, having been issued only with respect to calendar 1964 deliveries. The judgment of the District Court appealed from was rendered almost a year later, on December 17, 1965, and after new regulations had been promulgated to govern this sort of problem in the future.



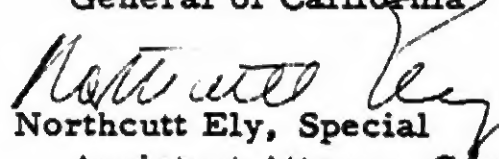
terms and conditions not contained in the Federal Power Act. The case was remanded with directions to dismiss the petition upon the ground that the cause was moot. See also United States v. Alaska S.S. Co., 253 U.S. 113, 116 (1920); Board of Public Utility Commissioners v. Compania General de Tabacos, 249 U.S. 425 (1919); Bryan v. Austin, 354 U.S. 933 (1957).

### CONCLUSION

The State of California, as amicus curiae, respectfully suggests to the Court that the judgment below should be vacated and the cause remanded with instructions to dismiss the complaint on the sole ground that the case is moot.

Respectfully submitted,

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